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DECISION

THE COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-193641 Personal name DATE: August 22, 1979

MATTER OF: James D. Wells--[Expenses of Training at Non-Government Facilities]

DIGEST:

1. Employee completed a course of instruction during off-duty time at the University of Guam, a non-Government facility, which culminated in an M.B.A. Claim for reimbursement is disallowed since training exceeded 80 hours in a single program for which a continued service agreement under 5 U.S.C. 4108(a) (1976) is required, and in order for its expenses to be eligible for Government reimbursement, authorization in advance of the commencement of the training by an appropriate administrative official must be obtained.

2. Employee was erroneously reimbursed for some training expenses at a non-Government facility which required a continued service agreement because there was no prior authorization by an appropriate administrative official before commencement of the training. Training expenses are allowances under 5 U.S.C. 5584(a) (1976) and since employee was without fault in tardy submission of training requests or administrative delay in their approval, collection of erroneous payment is waived as being against equity and good conscience and not in the best interest of the United States.

This action is the result of an appeal from the settlement of our Claims Division dated May 1, 1978, denying the claim of Mr. James D. Wells, an employee of the Department of Interior, for reimbursement of tuition expenses incurred at the University of Guam, a non-Government facility. AGC00033

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The record shows that while Mr. Wells was working at Guam as an auditor for Interior, he undertook a course of instruction during off-duty time that culminated in a Masters Degree in Business Administration (M.B.A.). Twelve courses, about 45 hours in each course, were involved. He claims no reimbursement for one of the courses; his claim for part of his tuition expenses for two of the courses was reimbursed by Interior; and he claims reimbursement for part of his tuition expenses for the remaining nine. Mr. Wells was encouraged to take the courses by his supervisor on Guam, who stated to Interior's headquarters that the courses for which tuition reimbursement was claimed were directly job related and that Mr. Wells' acquisition of an M.B.A. would be a benefit to the agency.

Interior's headquarters, in addition to finding that eight of the nine courses claimed for reimbursement were not directly job related, found that none of the nine had been approved by Interior's authorizing training official prior to Mr. Wells' enrollment, which was said to preclude reimbursement. Mr. Wells argues that the nine courses claimed for reimbursement are at least as job related as the two courses for which Interior did provide reimbursement, and that prior approval for training can be waived, as actually occurred in Interior's reimbursement for two of his courses. We agree with Interior that Mr. Wells' tuition expenses for the nine courses may not be reimbursed because there was no prior approval before commencement by an appropriate administrative officer that these expenses would be reimbursed as part of Interior's training program.

Mr. Wells took his courses in a non-Government facility, and since they were included within single programs that exceeded 80 hours, he was required by section 11(a) of the Government Employees Training Act (GETA), 5 U.S.C. 4108(a) (1976), to execute a written agreement before assignment to training stating that he would continue with Interior for a period equal to three times the training period. This requirement for a written agreement prior to assignment for training in a non-Government facility "necessarily implies an advance authorization for such training by an appropriate administrative official prior to the commencement thereof." 40 Comp. Gen. 12, 13 (1960). We believe that this implied requirement for prior approval is particularly important in enlightened agency compliance with

statutory limitations found elsewhere in GETA (5 U.S.C. 4106 and 4107 (1976)) concerning utilization of non-Government facilities. These limitations provide that agencies are restricted in the total amount of training and the amount of training for each person that can be conducted per year in non-Government facilities at Government expense. Also, certain kinds of facilities cannot be used at all, and programs offered by these facilities which could properly be reimbursed by the Government to some individuals cannot be reimbursed to other individuals. A unilateral signature by an employee on a continued service form prescribed under 5 U.S.C. 4108(a) (1976) without prior approval would not prevent the possibility of an agency having to choose retroactively between several individuals who had completed "training" for only one allowable reimbursement because of the statutory restrictions previously mentioned. Therefore, where a continued service agreement is required under 5 U.S.C. 4108(a) (1976), prior approval of the training must be obtained.

Mr. Wells argues that Interior waived the requirement for prior approval of training taken at a non-Government facility. He points to two letters from his supervisor to headquarters requesting approval for reimbursement which recognized that it was too late for prior approval and a letter from Headquarters, Chief, Division of Fiscal Services, stating that the requested reimbursement could be provided as long as the proper form was used. These documents were not issued by Interior's authorizing training official, and they were inconsistent with Interior's governing regulation, AAI-ADM No. 4, which provides:

> "1. Approval to obtain reimbursement from the Department for a self-study or other training course to be taken outside of regular duty hours should be obtained in advance of enrollment."

These documents could not waive statutory requirements and implementing agency regulations.

Since the claimed reimbursement for the nine courses cannot be approved because there was no prior approval, it would not be useful to explore whether these courses were as job related as the two for which reimbursement was given. It should be

emphasized that job relatedness alone has very little to do with whether particular courses in non-Government facilities are appropriate for reimbursement. GETA and the implementing regulations make it clear that an agency is supposed to match its training resources (manpower, materials and equipment, space, and funds) with its identified training needs, assigning priorities to its various needs, and that any particular training assignment is a management prerogative that depends on a number of things including: (1) assessment of an employee's potential, (2) the linking of that potential with actual duties supporting the agency's programs, and (3) the availability of funds to support the training. Mr. Wells has not made any showing that any of the courses he took were a required part of Interior's training program given to its auditors stationed at Guam.

Although neither Interior nor Mr. Wells mentioned it, the record indicates that approval by Interior's training authorizing official for the two courses for which partial reimbursement was obtained was not given until one of the courses had been completed and until after the other had commenced. This was contrary to Interior's AAI-ADM No. 4, and our holding in 40 Comp. Gen. 12 (1960), supra. Therefore, the payment was erroneous. However, the payment to Mr. Wells for reimbursement of training expenses was an allowance, and since Mr. Wells was led by certain agency officials to believe that retroactive reimbursement for training expenses would be provided, he was without fault in any tardy submission of training requests or administrative delay in their approval. We find in this case that collection of this erroneous payment from Mr. Wells would be against equity and good conscience and not in the best interest of the United States and is hereby waived under 5 U.S.C. 5584(a) (1976). See Matter of Waiver of Overpayments--IRS Scholarship Program--Physical Examinations to Ineligible Employees, B-186565, January 27, 1977.

Deputy Comptroller General
of the United States