

DECISION

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

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FILE: B-211812**DATE:** March 26, 1984**MATTER OF:** Use of Appropriated Funds to Pay Commercial
Parking Costs of Severely Disabled Employees**DIGEST:**

1. Rule that appropriated funds may not be used to pay for daily parking costs of Federal employees in commercial facilities generally applies to severely disabled employees. An exception is warranted when the condition requires the severely disabled employee to pay substantially higher commercial parking costs than those generally paid by non-disabled employees working at the same building who are able to utilize less expensive facilities at a greater distance.

2. Where an exception to the general rule is warranted, appropriated funds can be used to pay the difference between the parking costs the severely disabled employee must pay and those generally paid by non-disabled Federal employees working at the same facility.

The General Services Administration (GSA) asks whether agencies may expend appropriated funds on commercial parking for severely disabled^{1/} Federal employees when there are no Government-owned or controlled parking facilities available. For the reasons given below, we find the rule requiring Federal employees to pay for their own parking in commercial facilities is generally applicable to the severely disabled; nevertheless, appropriated funds may be used for such parking when an individual's severely disabled condition requires the individual to pay for commercial parking at a cost more than a de minimus amount above that generally paid by other employees working at the same facility.

^{1/} The Federal Property Management Regulations--Temporary Regulation D-69 defines a "Handicapped employee" as one who has "a severe, permanent impairment which for all practical purposes precludes use of public transportation, or an employee who is unable to operate a car as a result of permanent impairment who is driven to work by another." 48 Fed. Reg. 16272, § 8(d)(1). For our purposes, the definition applies to those who are severely disabled.

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BACKGROUND

The policies and procedures concerning employee parking on Government-owned or leased property under the control of GSA set forth priorities for agency assignment of spaces to employees for private parking. Severely disabled employees have the highest priority. Temp. Reg. D-69, 48 Fed. Reg. 16272, § 11(c). Currently no charge for parking on such property is required.

There are no similar procedures, however, pertaining to space assignments for severely disabled employees working in a commercial space leased by the Government which does not include Government-owned or controlled parking facilities. In those situations, when an agency requires commercial parking, it requests GSA to lease the necessary accommodations. The Federal Property and Administrative Services Act of 1949, as amended, 40 U.S.C. §§ 471, 490(h)(1), among other things, allows the GSA Administrator to enter into lease agreements for periods not in excess of 20 years "on such terms as he deems to be in the interests of the United States and necessary for the accommodation of Federal agencies in buildings and improvements * * * and to assign and reassign space therein to Federal agencies." Once GSA leases the parking space, the requesting agency then uses its appropriated funds to reimburse GSA for the costs.

In the past, before GSA granted a request for parking, the agency involved was required to certify to GSA that the parking was needed to employ and retain personnel to perform agency work and thereby avoid a significant impairment of agency operational efficiency. This was the standard set forth in GSA Order PBS 7030.2B, para. 10c (April 18, 1968), and adopted in 49 Comp. Gen. 476, 478-80 (1970). In 1977 that order was amended. One of the changes was to eliminate the "substantial impairment" language. Although GSA still uses the substantial impairment standard, it no longer requires agencies to make the certification required under the old order. It assumes that the agencies themselves use the same standard before requesting space, however.

GSA has informed us that in many leased buildings the provision of parking facilities would not be vital to the hiring and retention of the workforce as a whole, but that the absence of such facilities might impede the hiring and retention of severely disabled employees who must use their own automobiles, particularly those employees occupying lower-level positions in large metropolitan areas. In support of its position, GSA suggests that expenditure of appropriated funds for commercial parking (1) would be a

reasonable accommodation to severely disabled employees under section 501 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 791, to enable them to occupy positions for which they are qualified where the cost of the commercial parking is prohibitive; (2) would aid in the hiring and retention of severely disabled individuals; and (3) would be tantamount to an authorized reimbursement for parking incident to official business. GSA states that the parking could be provided either by reimbursement to the employee or through procurement of space by the Government for the employee. GSA also states that payments for such parking at GSA would not be burdensome as the number of employees involved is small. We will consider GSA's first two arguments generally in the discussion below. We will respond specifically to its third point at the end of our discussion.

DISCUSSION

The basic policy of the Government with respect to employee parking is that ordinarily it is the employee's responsibility to furnish transportation to and from the place of employment or duty, and if an employee chooses to use a private automobile for such purpose, the Government is under no obligation to provide a parking space. 43 Comp. Gen. 131, 132 (1963). As discussed in the Background section, in the past, exceptions have been warranted when the parking was required to avoid a significant impairment of agency operating efficiency. 49 Comp. Gen. 476, 479-80 (1970). In the case presented, GSA has suggested that use of appropriated funds to pay for the parking is not necessary to avoid a significant impairment of agency operating efficiency for its work force as a whole. As there is no statute authorizing use of appropriated funds for the parking described, and the GSA standard approved by us in 49 Comp. Gen. 476, 478-80, has not been met, we must determine whether there is a sufficiently strong governmental interest in assisting the severely disabled to permit an exception to the general rule requiring Federal employees to pay for their own parking in commercial facilities.

The President and the Congress have committed the Federal Government both to employ and to prohibit discrimination against the handicapped. See, for example, Executive Order No. 11480 of September 9, 1969, 34 Fed. Reg. 14273, 29 U.S.C. § 791nt. (1976), establishing the President's Committee on Employment of the Handicapped. A number of pieces of legislation have been enacted to effect this commitment, including, among others, the Rehabilitation Act of

1973, as amended, 29 U.S.C. §§ 701 and following; the Education of the Handicapped Act, as amended, 20 U.S.C. §§ 1401 and following; and the Urban Mass Transportation Act of 1964, as amended, 49 U.S.C. § 1612.

The Rehabilitation Act of 1973 established a national policy of bringing disabled citizens into the mainstream of American life. H.R. Rep. No. 1279, 96th Cong., 2d Sess. 4 (1980). Among other things, the Act set up a Federal Inter-agency Committee on Handicapped Employees. In cooperation with the Civil Service Commission (now a function handled by the Equal Employment Opportunity Commission), one of the Committee's purposes is to review, on a periodic basis, the adequacy of hiring, placement, and advancement practices for handicapped employees in the Executive Branch of the Federal Government and to insure that the special needs of handicapped employees are being met. 29 U.S.C. § 791(a). The Act also requires that Executive Branch agencies prepare affirmative action program plans for the hiring, placement, and advancement of handicapped individuals, including in the plans a description of the extent to which the special needs of the handicapped are being met and the methods used therefore. Id. § 791(b).

In 1980, the Congress reaffirmed its commitment to assist handicapped Federal employees by enacting legislation which, among other things, establishes an Architectural and Transportation Barriers Compliance Board. Pub. L. No. 96-523, December 12, 1980. The Board is responsible, as one of its duties, for insuring accessibility by the handicapped to federally occupied or funded buildings and facilities. It was authorized "to consider ways in which travel expenses in connection with transportation to and from work for handicapped individuals can be met or subsidized when such individuals are unable to use mass transit systems or need special equipment in private transportation * * *." Id. § 792(c). This authority could well include agency payment of parking costs.^{2/}

The commitment to assist the handicapped has been reflected in GAO decisions as well. In some early decisions, we had concluded that illness or physical disability provided no basis for increasing the cost of transportation or travel expenses to be paid by the Government. See, e.g., 27 Comp. Gen. 52 (1947). Recently, however, we have made exceptions for the benefit of the handicapped. 56 Comp.

^{2/} The Board, however, has told us informally that it has not yet made such a proposal.

Gen. 661, 662 (1977) (travel and per diem expenses of an attendant are necessary travel expenses incident to a handicapped employee's travel); 56 Comp. Gen. 398 (1977) (Social Security Administration could use its appropriations to reimburse handicapped employee for cost of a motorized wheelchair where the Administration violated standards under the Architectural Barriers Act and a nonpowered wheelchair could not be used); 55 Comp. Gen. 800 (1976) (travel expenses of attendant accompanying handicapped employee to awards ceremony for honorary recognition of handicapped employee are necessary expenses under 5 U.S.C. § 4503).

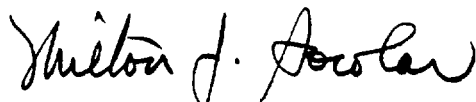
Notwithstanding the strong Government commitment to facilitate employment of the handicapped, we do not think a general exception to the rule requiring Federal employees to pay for commercial parking is warranted for severely disabled employees when the benefit conferred is primarily economic, and, for the most part, is not directly related to ameliorating access-to-work impediments arising from a severely disabled condition. For example, in large urban areas where no Government-owned or controlled parking facilities are available and where parking costs are high, it is possible that substantial numbers of non-handicapped employees working at the same facility and receiving the same salaries as the severely disabled would have to pay the same parking costs.

On the other hand, there may well be circumstances in which an agency could find that an individual's severely disabled condition requires that individual to park in a particular commercial lot, presumably close to the place of work, at a cost substantially above that paid by non-handicapped Federal employees working at the same facility. In this regard, the non-handicapped employees either could use other means of transportation to and from work that are cheaper, or pay less for parking because they are able to park in lots farther from the place of work, neither of which alternatives would be available to the severely disabled employee. When this occurs, we think the higher costs paid by the severely disabled employee would be directly related to that employee's condition, and could frustrate the hiring and retention of such persons. In those situations, even in the absence of specific legislation, we think the Government's general commitment to the handicapped would be sufficiently strong to allow an exception to our general rule requiring employees to pay for their parking.

Accordingly, where an individual's severely disabled condition is the principal reason that he or she must pay

parking costs more than a de minimus amount above the costs paid by non-handicapped employees for parking, we think appropriated funds can be used to pay the difference. An agency's determination that severely disabled employees must pay substantially greater amounts for parking than is usually paid by other employees can be made on the basis of a general survey of available parking facilities near its building. It would not be necessary for an agency to ascertain how much each of its employees actually spends for parking.

It remains to address GSA's suggestion that expenditure of appropriated funds on commercial parking at the regular work place of a severely disabled employee can be equated to a reimbursement for official business authorized by 5 U.S.C. § 5704. The purpose of a reimbursement under section 5704 is to compensate employees for parking as part of the mileage and related allowances for travel incurred on official business. Thus, when an agency makes payments under that section, it is not paying for the parking space, but is reimbursing its employees for travel expenses. B-162020, July 6, 1973. The parking costs under consideration have nothing to do with travel on official business: they are incident to an employee's commute to and from the regular place of business. For a variety of reasons, including the Government's potential liability for damage or injury incurred by an employee acting within the scope of employment, we think it is unwise to suggest that while commuting to and from the regular place of work, a severely disabled employee is on official business.


for Comptroller General
of the United States