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The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Bertram C. Drouin - Use of Rental and Government Automobiles, Travel Expenses, Imprest Fund Charges
File: B-216016

Date: March 23, 1987

DIGEST

1. An employee was reimbursed for the costs of renting an automobile for local transportation during a temporary duty assignment. He may not retain reimbursement because he has not shown that the rental was approved based on a determination of advantage to the government, as required by para. 1-3.2 of the Federal Travel Regulations.

2. In 1981 and 1982, an employee used a government car for home-to-work travel proscribed by 31 U.S.C. § 1344 (1982), as interpreted by our decision in 62 Comp. Gen. 438 (1983), and also used the car for some travel on weekends and holidays. He need not repay expenses associated with his use of the car for home-to-work travel since that use predated our decision in 62 Comp. Gen. 438, above, which clarified statutory restrictions on home-to-work travel and applied only on a prospective basis. However, he is liable for amounts attributable to his use of the car on nonworkdays, since he has not shown that he used the car for official purposes on those days.

3. An employee received reimbursement for seven trips away from his official duty station, but later could not identify the specific purpose of each trip. The employee may not retain expenses associated with the trips because he has not met his burden of proving that the expenses were essential to the transaction of official business.

4. An employee charged a number of expenses to an agency imprest fund. While he generally explained that the expenses were incurred for purposes of maintaining "official contacts," he did not furnish any receipts or supporting documentation. In the absence of evidence supporting the expenses, we hold that the employee has not met his burden of proving the government's liability under 4 C.F.R. § 31.7 (1986), and his claim may not be allowed.

5. An employee incurred a fee for membership in a private airline club, where he allegedly conducted business with public and private officials. The employee may not retain reimbursement for the fee because entertainment expenses are not payable unless funds are made available pursuant to specific statutory authority. Furthermore, 5 U.S.C. § 5946 (1982) generally prohibits the use of appropriated funds for the payment of membership fees incurred by individual employees.

DECISION

Mr. Bertram C. Drouin, a retired employee of the United States Customs Service, has requested that we reconsider our decision in Bertram C. Drouin, 64 Comp. Gen. 205 (1985), which held in part that Mr. Drouin could not retain full reimbursement of $1,877.42 for automobile rental and parking charges he incurred during a temporary duty assignment. Additionally, Mr. Drouin has requested that we consider his claim for additional amounts which Customs has arranged to recoup from him, including the following: (1) $1,136.13 associated with Mr. Drouin's use of a government car for home-to-work travel and travel on weekends and holidays; (2) $1,387.03 for seven trips Mr. Drouin made to Baltimore, Maryland; and (3) $514.64 for certain expenses Mr. Drouin charged to a Customs imprest fund.

For the reasons explained below, we affirm our prior decision and hold that Mr. Drouin may not retain reimbursement for automobile rental and parking charges. Furthermore, we hold that Mr. Drouin must repay expenses associated with his use of a government car on nonworkdays, but that he may retain expenses attributable to his home-to-work use of the car because it predated our decision clarifying the statutory restrictions on such use. Mr. Drouin may not retain reimbursement for the seven trips in question, or for the expenses he charged to the imprest fund, because he has not satisfied his burden of proving the government's liability for those expenses.

AUTOMOBILE RENTAL CHARGES

Background

In our prior decision, we held that Mr. Drouin, formerly the Regional Director of Investigations in Chicago, Illinois, was not entitled to retain full reimbursement of $1,877.42 for automobile rental and parking charges he incurred between August 9 and October 26, 1982, while he was performing temporary duty in Washington, D.C. We based this holding on the

statement of Mr. Drouin's supervisor in Washington that he had not authorized the car rental, and on an indication in the record that Mr. Drouin and other Customs employees stationed in Washington used the car for commuting purposes. We concluded that the Customs Service should limit Mr. Drouin's reimbursement for car rental and parking charges to the cost of permissible local transportation it determined to be advantageous to the government, and that it should then recoup the excess amounts previously paid to him.

Following our decision, Customs determined that Mr. Drouin could retain reimbursement only for those rental expenses not exceeding daily round-trip subway fare between his hotel and temporary duty site. Customs determined that Mr. Drouin was not entitled to retain any additional reimbursement because he could not provide a specific explanation of the purposes for which he had used the rental car.

Mr. Drouin disputes our decision and contends that he is entitled to full reimbursement for the rental and parking charges he incurred. While Mr. Drouin states that he did not maintain usage logs for the car, he argues that he and other Customs employees temporarily stationed in Washington used the car for "official purposes" and he denies that the car was used for commuting. Mr. Drouin explains that he found it necessary to rent the car because there were approximately 50 Customs agents performing temporary duty in Washington, and only one government-owned car was available for their use. He maintains that, as a Regional Director of Investigations, he had the requisite authority to rent an automobile, and he adds that his supervisor in Chicago approved two of the travel vouchers on which he claimed expenses associated with the rental.

Discussion

As we noted in our prior decision, para. 1-3.2 of the Federal Travel Regulations (Supp. 1, Nov. 1, 1981), incorp. by ref., 41 C.F.R. § 101-7.003 (1985), provides that an employee may use a rental car only if an appropriate official has determined that the use of a common carrier or other method of transportation would not be more advantageous. The requirement of a determination of advantage to the government is mandatory; if an employee cannot demonstrate that such a determination was made, he is not entitled to reimbursement for automobile rental charges. Robert P. Trent, B-211688, October 13, 1985. Applying this requirement to Mr. Drouin's case, it is not material that he may have believed he had the authority to rent an automobile or that his supervisor in Chicago approved his vouchers claiming the rental expenses.

See Trent, above, at 10. Since Mr. Drouin has not provided evidence that a determination of advantage to the government was made by an appropriate official, he is not entitled to reimbursement for his use of the rental car.

We have held that an employee who performs official travel not authorized as advantageous to the government may receive reimbursement limited to the constructive cost of travel by a more advantageous mode. See Trent, above, at 10, 11; Sandra Massetto, B-206472, August 30, 1982. However, while Mr. Drouin asserts generally that he used the rental car for "official purposes," he has not furnished any specific description of those purposes. Consequently, Mr. Drouin has not met his burden of proving the government's liability for any part of his transportation expenses. See 4 C.F.R. § 31.7 (1986).

Accordingly, we affirm our prior decision and hold that Mr. Drouin is not entitled to retain reimbursement for the automobile rental and parking charges he incurred.

USE OF GOVERNMENT-OWNED AUTOMOBILE

Background

Between January 1981 and October 1982, when Mr. Drouin was serving as the Regional Director of Investigations in Chicago, he used a government-owned car and claimed monthly charges for parking it at a garage near his residence. Customs' Office of Internal Affairs subsequently conducted an audit of his use of the government car and reportedly discovered, through an examination of vehicle reports and interviews with Mr. Drouin's apartment manager and the garage manager, that he had used the car for home-to-work travel as well as for some travel on weekends and holidays. Based on this information, Internal Affairs determined that Mr. Drouin was liable to repay expenses associated with his use of the government car for home-to-work and nonworkday travel. In support of this determination, Internal Affairs noted that Mr. Drouin had not received approval from the Commissioner of Customs to use the car for home-to-work travel on a regular basis, as required by a Customs policy statement issued on October 9, 1980.

The Deputy Assistant Commissioner, Office of Enforcement, disagreed with Internal Affairs' conclusion that it was improper for Mr. Drouin to use the government car for home-to-work travel. Referring to the same 1980 policy cited by Internal Affairs, the Deputy Assistant Commissioner maintained that Mr. Drouin's use of the government car for home-to-work travel was consistent with criteria stated in the

policy. Presumably, the Deputy Assistant Commissioner was referring to the policy's authorization of irregular use of a government car for home-to-work travel if approved by a field supervisor on a "day-by-day basis" in accordance with "common sense and work requirements."

Notwithstanding the Deputy Assistant Commissioner's disagreement, Internal Affairs concluded that Mr. Drouin had used the government car improperly and that he was liable for $1,136.13, representing the following amounts: (1) $432.63 for his home-to-work travel, calculated by multiplying the number of days Mr. Drouin used the car (114 days) by the round-trip driving distance between his home and office (23 miles), and then by the official mileage reimbursement rate in effect at the time (16.5 cents per mile); (2) $564.63 for his parking expenses between January 1981 and October 1982; and (3) $132 for his personal use of the government car on weekends and holidays, determined by multiplying the mileage he incurred on nonworkdays for which he claimed no overtime by the reimbursement rate of 16.5 cents per mile.

Mr. Drouin does not dispute that he sometimes used the government car for home-to-work travel. However, he contends that this use was justified by his position as a "principal field officer" and that it was consistent with the criteria outlined in Customs' 1980 policy. He states that he drove the government car home at night when he needed it to conduct official business in the morning before reporting to work, and that he sometimes took the car home on weekends when he was scheduled to begin official travel early Monday morning.

Additionally, Mr. Drouin disputes the accuracy of the figures which Internal Affairs used to calculate his indebtedness. He states that, contrary to Internal Affairs' assumption, he did not perform home-to-work travel on each of the 114 days he used the government car and that he normally used public transportation to commute to work. Further, he states that the round-trip driving distance between his home and office was 19 miles rather than 23 miles.

Discussion

Under 31 U.S.C. § 1344 (1982),[1/] a government vehicle may be operated with appropriated funds only if it is used for an

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1/ This Section was recently amended by Pub. L. No. 99-550, 100 Stat. 3067 (1986), but the provisions applicable to Mr. Drouin remain substantively unchanged.

"official purpose." Although section 1344 does not define the term "official purpose," it provides that, with several exceptions, an official purpose does not include transporting officers or employees of the Government between their residences and places of employment. The only statutory exception which arguably is relevant to Mr. Drouin's case, set forth in section 1344(a)(2), allows an employee performing "field work" to use a government vehicle for home-to-work travel if such travel is required by his work and the travel has been approved by the head of the agency concerned. Clearly, Mr. Drouin failed to qualify for this exception because he did not obtain the requisite approval from the head of his agency. 2/

In the absence of Mr. Drouin's coverage by a statutory exception to the home-to-work travel prohibition in 31 U.S.C. § 1344, it is not material that Customs' 1980 policy purported to authorize uses of a government car for home-to-work travel on a discretionary basis in accordance with "work requirements" and field officials' "common sense." In our decision 62 Comp. Gen. 438, issued on June 3, 1983, we held that, unless certain narrow exceptions apply, an agency may not properly exercise administrative discretion to provide home-to-work transportation for its officers and employees.

Nevertheless, despite our holding in 62 Comp. Gen. 438, we recognized in that decision that the improper use of government cars for home-to-work travel had been a common practice for many years in a large number of agencies. We acknowledged that the improper practices may have resulted from some of our prior decisions, since those decisions contained language suggesting that agency officials had broad discretion to determine the circumstances under which government cars could be used for home-to-work transportation. Consequently, we stated that our decision would apply only on a prospective basis (from the date of its issuance, June 3, 1983), and that it would be inappropriate to seek recovery

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2/ Furthermore, although the record does not permit a detailed analysis of this point, it is questionable whether Mr. Drouin's work in Chicago would have qualified as "field work" within the meaning of section 1344(a)(2). We have indicated that the term "field work" pertains to those employees who spend a large proportion of their time "on the road," traveling away from their duty stations, rather than to employees who are permanently stationed at remote installations. See 63 Comp. Gen. 257, 259-60 (1984).

from any official who had in the past benefited from home-to-work transportation. 62 Comp. Gen. 438, at 440. Accordingly, although we conclude that Mr. Drouin's use of the government car for home-to-work travel was improper under 31 U.S.C. § 1344, as interpreted by our decision in 62 Comp. Gen. 438, we hold that he need not repay mileage and parking expenses associated with that travel because it predated our decision in 62 Comp. Gen. 438.

Since our decision in 62 Comp. Gen. 438 dealt only with home-to-work travel, that decision provides no basis for excusing Mr. Drouin from repaying expenses attributable to his use of the government car on weekends and holidays. As noted previously, Customs presumed that the mileage Mr. Drouin incurred on nonworkdays for which he claimed no overtime was attributable to his use of the car for personal purposes, and Mr. Drouin has not furnished any explanation or evidence to rebut Customs' presumption. Accordingly, we concur with Customs' determination that Mr. Drouin is liable to repay expenses associated with his use of the government car on nonworkdays, and we find no basis for questioning the reasonableness of its determination to charge him at the rate of 16.5 cents per mile, for a total of $132.

TRAVEL EXPENSES

Background

While Mr. Drouin was working in Chicago, he made a number of trips to various locations. Internal Affairs audited nine trips which he took to Baltimore, Maryland, believing that Mr. Drouin had traveled to Baltimore primarily for his own benefit because of the following facts: (1) although Mr. Drouin had been transferred from Washington, D.C., to Chicago in January 1981, his family continued to live near Baltimore, in Mechanicsville, Maryland; (2) most of the employee's trips to Baltimore extended over holidays or periods of leave; (3) during the trips, Mr. Drouin would not claim subsistence expenses for several days at a time; and (4) Mr. Drouin's travel orders, which he approved himself by virtue of his status as a principal field officer, indicated only that the trips were made for purposes of "official business."

After Internal Affairs interviewed Mr. Drouin and investigated his statements concerning the nine trips, it decided that only two of the trips were sufficiently explained. Internal Affairs determined that Mr. Drouin owed the government $1,387.03 for the remaining seven trips because he could not identify the particular purposes of those trips. While

Mr. Drouin asserted generally that all seven trips were made for purposes of "official business," he acknowledged that he had no travel log or diary which would refresh his memory concerning the specific purposes of the trips. He now adds that, since he was a frequent traveler, it would be unreasonable to expect him to remember the purpose of each of his trips.

Discussion

A fundamental prerequisite to the payment of travel expenses is that such expenses must be "essential to the transaction of official business," FTR para. 1-1.3b. It is incumbent upon an employee claiming travel expenses to demonstrate that the expenses were incurred for official purposes; if the employee cannot meet this burden, he is not entitled to reimbursement. See Raymond Eluhow, B-198438, March 2, 1983. See also 4 C.F.R. § 31.7, cited previously. Accordingly, in the absence of an explanation from Mr. Drouin specifically identifying the official purpose of each of the seven trips in question, we find no basis for questioning Customs' determination that he is liable to repay $1,387.03 for those trips.

PAYMENTS FROM IMPREST FUND

Background

During the period September 22, 1981, to September 18, 1982, Mr. Drouin charged nine expenditures to the Chicago office's imprest fund. Internal Affairs audited the imprest fund records, and found no receipts or other documentation supporting the expenditures. Reviewing Mr. Drouin's claims, Internal Affairs found that he had described the expenditures in very general terms, stating that he had incurred them for purposes of maintaining "official" or "foreign official" contacts.

When Mr. Drouin was interviewed by Internal Affairs, he stated that he maintained no log or diary which would indicate the specific purposes of the expenditures and that the claims themselves were his only record. He generally described the purpose of several of the larger expenditures and, apparently, Internal Affairs was able to substantiate only a portion of one of these.3/ Mr. Drouin added that a

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3/ Based on this substantiation, Internal Affairs reduced the amount originally under investigation--$778.64--to $514.64.

$60 expenditure represented the fee he paid in order to obtain an individual membership in a private airline club. He explained that he obtained the membership so that he could conduct private meetings with informants and foreign officials at Chicago's O'Hare International Airport, and that, when he was not using the membership card, he made it available for use by other Customs employees.

Internal Affairs concluded that Mr. Drouin was liable to repay $514.64 for his charges to the imprest fund because he had not adequately documented them. With regard to the $60 airline club fee, Internal Affairs determined that the fee represented a nonreimbursable entertainment expense. Internal Affairs noted that, although Customs has a small appropriation for official reception and representation expenses, those funds were not available for use by regional personnel.

Mr. Drouin now adds that he incurred the expenses in question because his position as Regional Director of Investigations required him to meet with a number of public and private officials. He asserts generally that he was unable to obtain receipts because of the nature of the expenses he incurred.

Discussion

Under 4 C.F.R. § 31.7, cited previously, an employee claiming an expense has the burden of proving the government's liability for the expense. Since Mr. Drouin has not submitted any evidence to support his claim for the expenses he had charged to Customs' imprest fund, we will not disturb Customs' determination that he must repay those expenses.

The airline club membership fee may not be paid because, as Internal Affairs noted, entertainment expenses are payable only if funds have been made available pursuant to specific statutory authority. See 61 Comp. Gen. 260 (1982); and 43 Comp. Gen. 305 (1963). Furthermore, 5 U.S.C. § 5946 (1982) generally prohibits the use of appropriated funds for the payment of membership fees incurred by individual employees. See B-213535, July 26, 1984. Compare 61 Comp. Gen. 542 (1982) (an agency may purchase a membership in its own name if the membership is primarily for the benefit of the agency and is necessary to carry out agency functions).

CONCLUSION

For the reasons stated above, we affirm our prior decision and hold that Mr. Drouin may not retain reimbursement for automobile rental and parking charges. Additionally, we hold that Mr. Drouin must repay expenses associated with his seven

trips to Baltimore, the expenses he charged to Customs' imprest fund, and the expenses attributable to his use of a government car on nonworkdays. However, Mr. Drouin need not repay amounts associated with his use of a government car for home-to-work travel, because that travel predated our decision clarifying the relevant statutory restrictions.

for Milton J. Socolar
Comptroller General
of the United States