



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Ronald Bartell - Personal Emergency Travel from a
Foreign Area at Government Expense - Waiver

File: B-225977

Date: April 14, 1988

DIGEST

An employee, not in the Foreign Service, who was stationed in a foreign area, requests waiver of an erroneous payment of travel expenses which arose when he was authorized emergency round-trip travel to the United States through use of a Government Travel Request (GTR). There is no indication that the employee was aware he was not entitled to emergency travel at government expense or that he had any reason to question Mission and Embassy personnel who advised him and obtained the airline tickets at government expense. Therefore, we conclude that that erroneous payment of his round-trip airfare in the amount of \$848.60 may be waived under 5 U.S.C. § 5584, as amended.

DECISION

This decision is in response to a request from the Controller, Department of Energy (DOE). It concerns the claim of Mr. Ronald Bartell for waiver of his debt to the United States which arose incident to emergency personal travel performed from an overseas duty station. We conclude that waiver may be granted for the following reasons.

BACKGROUND

Mr. Ronald Bartell, an employee of DOE, was transferred to the United States Mission to the United Nations in Vienna, Austria, in January 1984, for permanent duty. On April 25, 1986, while still stationed in Vienna, Mr. Bartell performed round-trip emergency travel back to the United States due to a death in the family. His airfare was procured through use of a Government Transportation Request (GTR) issued by the Mission at a cost of \$848.60, which was charged to DOE by the State Department. Additionally, Mr. Bartell filed a claim for an additional \$77.43, representing miscellaneous transportation expenses to and from air terminals both in the United States and in Austria.

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When DOE questioned the reimbursement claim for this travel, Mr. Bartell expressed the belief that the emergency travel was reimbursable since, upon inquiry to the State Department authorities in Vienna, he had been advised that there was authority in the Foreign Affairs Manual for allowing the expenses of travel of this nature.

However, by decision B-225977, dated April 28, 1987, we ruled that the travel entitlements of non-Foreign Service employees stationed in foreign areas, such as Mr. Bartell, are governed by the Federal Travel Regulations, not the Foreign Affairs Manual. Since there was nothing in 5 U.S.C. chapter 57 which authorized an employee to be reimbursed in such circumstances, we concluded that Mr. Bartell was not entitled to reimbursement for the miscellaneous expenses claimed and that the expense charged to DOE by the State Department for his airfare was to be recouped from him.

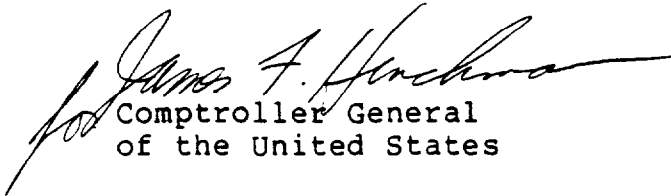
Mr. Bartell now seeks waiver of that debt. He contends that he was informed by the Mission and Embassy administrative personnel that he was entitled to emergency travel at government expense. The only information available was the Embassy's copy of the Foreign Affairs Manual (FAM) which described such rights for Foreign Service personnel. In the absence of information to the contrary, it was assumed that such entitlement extended to all federal employees stationed in foreign areas. Mr. Bartell asserts that when he was given the GTR to procure his airline ticket he accepted it in good faith, claiming that he had no reason to even suspect that the expenses involved would not be allowed.

The DOE report supports Mr. Bartell's claim on the grounds that there is no indication of fraud, fault or lack of good faith on his part and that it would be against equity and good conscience and not in the best interests of the United States to deny waiver since Mr. Bartell was unaware that as a DOE employee he was not entitled to take such emergency travel at government expense.

RULING

Waiver of erroneous payments under 5 U.S.C. § 5584 (1982), as amended by Public Law 99-224, 99 Stat. 1741, December 28, 1985, to include travel, transportation and relocation expense overpayment claims, is an equitable remedy. Because of its equitable nature, waiver must necessarily depend on the facts in each case since by statute, any indication of fraud, misrepresentation, fault, or lack of good faith on the part of an employee or interested party precludes waiver. 5 U.S.C. § 5584(b)(1) and 4 C.F.R. § 91.5(c).

We agree with DOE that the facts here show no indication that Mr. Bartell is precluded from waiver by the four factors listed above. Moreover, under the circumstances presented in this case, we conclude that collection of this erroneous payment of travel expenses would be against equity and good conscience and not in the best interests of the United States. There is no indication that Mr. Bartell was familiar with the laws and regulations governing travel or that he would have any reason to question the information provided by the Mission and Embassy personnel that he was entitled to return to the United States at government expense for emergency travel. Further, there is no clear indication in the record before us that Mr. Bartell would have performed this travel at his own expense if he had been correctly advised about his travel entitlements. Therefore, we conclude that the erroneous payment of Mr. Bartell's airfare in the amount of \$848.60 is waived under the authority of 5 U.S.C. § 5584, as amended.


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