



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Michael L. Smiley - Relocation - Temporary
Quarters Subsistence Expenses and Household Goods
Moving Expenses

File: B-226189

Date: December 9, 1988

DIGEST

1. Where an employee, in response to queries about the accuracy of a travel voucher submitted by him, submits a second voucher which includes substantial and fundamental changes from the original, the employee's claim may not be paid absent satisfactory explanation for the discrepancies. Substantial changes from the original voucher, where unexplained, raise a presumption of fraud on the original voucher which may not be corrected by submitting a revised voucher.
2. The mere fact that an employee entered into a short-term lease is not sufficient to conclude that his quarters were temporary in nature considering all the other factors that indicated permanence. The quarters consisted of an unfurnished house in which he lived for about 1 year, he moved his household effects into the quarters, he submitted no evidence of attempts to find permanent quarters, and he had personal checks printed with the quarters' address.
3. While temporary quarters subsistence expenses (TQSE) may be paid for the dependent parent of a transferred employee, it is the employee's duty to submit satisfactory evidence of the parent's dependency on him and to show that the parent was a member of employee's household at time of transfer. In the absence of such showing, TQSE may not be paid for the parent.
4. Shipment of household goods is to be made by the most economical method as determined by the agency based on a cost comparison. Once an administrative determination is made as to the most economical method, the employee's reimbursement is limited by the method authorized. Where the agency determined that the Government Bill of Lading (formerly referred to as the actual expense method) was most economical and authorized move by that method, employee may not be reimbursed under the commuted rate method.

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5. Employee had an acquaintance fly from the new duty station to the old duty station and drive the employee's rental vehicle to his new duty station. The employee requested reimbursement for the acquaintance's meals and airfare. Such reimbursement may not be made. There are no provisions in the regulations which allow reimbursement for moving assistance of this kind.

DECISION

We have been asked for an advance decision regarding certain change-of-station travel claims by Michael L. Smiley, an employee of the National Park Service. The request includes claims for temporary quarters subsistence expenses (TQSE) for himself, separate TQSE for his dependent mother, and additional reimbursement in connection with moving his household goods including payment of airfare and meals for an acquaintance who assisted his move. All Mr. Smiley's claims are denied.

TQSE

Mr. Smiley transferred from Gulf Islands National Seashore in Pensacola, Florida, to the National Park Service Southeast Regional Office in Atlanta, Georgia, on March 31, 1985. On May 9, 1985, he submitted a voucher claiming TQSE for himself and his dependent mother for the first 30-day period, April 1-30, 1985. On the voucher the total lodging and meal expenses he claimed for each day ranged between \$83.75 and \$85, slightly in excess of the maximum TQSE rate for an employee and dependent mother, \$83 per day. Included in the daily amounts, he claimed a cost of \$18 per day for lunch for himself and his mother for the 30-day period. Because this amount seemed to be excessive, the Park Service investigated and found that Mr. Smiley frequently lunched in a government building cafeteria where the highest priced lunch would have been about \$5.

After being asked if he would like to "rethink" these claims Mr. Smiley turned in a new voucher on June 27, 1985, separating his and his mother's claims into separate sheets. In addition to the April 1-30 period, this voucher included the May 1-30 period as well. Several differences appeared. First, Mr. Smiley claimed \$5.50 for breakfast, \$4 for lunch, and \$8 for dinner for himself each and every day with the exception of a \$15 dinner claimed for April 28. Second, he claimed the same amounts (\$5.50, \$4, \$8) each day for his mother's meals the first 8 days of April. For the balance of the period, April 9 to May 30, he claimed \$20 per day

lodging expenses for his mother plus an \$8 dinner for her on each of 16 days and a \$13.50 dinner on one day. Mr. Smiley then explained that his mother did not live in the apartment he rented but was in a personal care home in Chamblee, Georgia, the charge for which was \$600 per month including meals. From this he derived the \$20 per day claim for her lodging.

For April, Mr. Smiley had originally claimed a total of \$2,500; his revised voucher claimed a total of only \$1,935.50, or about \$20 per day less than he had originally claimed. The Park Service believes Mr. Smiley's entire original April claim to be fraudulent and asks us to determine (1) whether it should be denied because of fraud, and (2) whether the agency acted improperly by asking Mr. Smiley if he wanted to "rethink" his claim. In addition, it raises various questions concerning the TQSE that he claimed for May and certain items he included as expenses for moving his household goods.

The burden of establishing fraud rests upon the party alleging the fraud and the evidence must be sufficient to overcome an existing presumption in favor of honesty and fair dealing. If the circumstances are as consistent with honesty and good faith as with dishonesty, the inference of honesty must be drawn. See 57 Comp. Gen. 664 (1978). The unique factual situations of each case make it difficult to prescribe exact rules concerning fraud or misrepresentation. Generally, however, where discrepancies are minor, small in dollar amounts, or where they are infrequently made, a finding of fraud would not normally be warranted absent the most convincing evidence to the contrary. By the same token, where discrepancies are glaring, a finding of fraud could be more readily made absent a satisfactory explanation from the claimant. See 57 Comp. Gen. 664, supra. A certifying or disbursing officer of the government should seek further information from the claimant (as was done in this case) or other sources when a discrepancy or inconsistency is noted in a claim which renders it doubtful.

In this case, there is little doubt that Mr. Smiley misrepresented the facts on his original voucher. By revising his voucher, he essentially admitted that the original voucher was false. The differences between the two are neither minor, small in dollar amounts, nor infrequently made. The misrepresentations are glaring indeed, amounting to \$20 or more per day and totaling over \$550. Adding up totals for each day's meals from the second voucher never reveals a total equal to, or even close to, the total for that day listed on the first voucher. The mother's separate living arrangements and charges were revealed when he filed the

second voucher but not the first. Mr. Smiley has offered no receipts to support the amounts claimed for meals on either voucher nor has he offered a full explanation for the differences. In addition, as is pointed out by the agency, the factual premise for the second voucher is different from the first. That is, the second is based on his mother living separately from him, while the first gave no indication of this.

The General Accounting Office has long followed a basic rule that each item of pay and allowances is to be received as a separate claim even though several such items are included in a single voucher. See 60 Comp. Gen. 357 (1980) and 41 Comp. Gen. 285 (1961). A separate item for these purposes:

" . . . is one which the employee could claim independently of his other entitlements. Accordingly, a fraudulent claim for per diem would not necessitate the denial of the other separate items on the voucher, which are not fraudulently based. As to subsistence expenses, the voucher may be separated according to individual days whereby each day comprises a separate item of per diem or actual subsistence expense allowance A fraudulent statement for any subsistence item taints the entire subsistence claim for that day." 57 Comp. Gen. 664 at 667.

Following this rule, Mr. Smiley's claims for the entire month of April must be denied since the misrepresentations result in the amounts claimed for each day being substantially different on the two vouchers.

The claims for May, however, must be viewed separately since they were not a part of the original voucher and Mr. Smiley has no contradictory claims for those days. The fact that Mr. Smiley claims the exact same amount each day even in his May claims is troubling and such circumstantial evidence is competent for finding fraud or misrepresentation provided it affords a clear inference of fraud and amounts to more than suspicion or conjecture. 57 Comp. Gen. 664. See also B-187975, July 28, 1977; and B-212354, Aug. 31, 1983. Mr. Smiley apparently attempted to average the costs rather than provide the actual cost of each meal. Why he did this is not clear from the record, but that alone does not necessarily suggest dishonesty or bad faith on these days. However, the agency should not make payment in such a case without a full and acceptable explanation from the employee as to how he arrived at those figures and their validity.

The agency also questions the lodging portion of the April and May claims, believing that the premises Mr. Smiley occupied were not "temporary" in nature but were his permanent quarters.

The payment of temporary quarters expenses is governed by the provisions of 5 U.S.C. § 5724a(a)(3) (1982) and the implementing regulations contained in chapter 2, part 5, of the Federal Travel Regulations (FTR). We have consistently held that a determination as to what constitutes temporary quarters is not susceptible of any precise definition, and any such determination must be made on the facts of each case. In determining whether permanent-type quarters were occupied temporarily we have considered such factors as movement of household effects into quarters, the duration of the lease, the period of residence in the quarters by the employee, any expression of intent, and evidence of attempts to secure a permanent dwelling. B-194073, June 18, 1979.

In this case in February 1985 Mr. Smiley entered into a lease for the property covering April and May which, after that period, converted into a month-to-month lease. This short-term lease is an indication of intent to stay there only temporarily. See Saundra J. Samuels, B-226015, Apr. 25, 1988; and Charles J. Wilson, B-187622, June 13, 1977. The record includes a request from Mr. Smiley dated May 21, 1985, for approval of an additional period of TQSE (which apparently was not granted) on the basis that he was having difficulty selling his house in Florida. This, he said, placed extreme financial hardship on him, to maintain two monthly housing payments, and also made him unable to qualify for a new mortgage with which to purchase a permanent residence at his new duty station. These are the only factors that indicate that the quarters were intended to be temporary. The agency, however, in support of its view that the quarters were permanent in nature points out that the quarters consisted of an unfurnished house with a two-car garage rented for an indefinite period into which Mr. Smiley moved at least part of his household goods (he says he stored the remaining goods in the garage), and he lived in the quarters for almost a year. He has submitted no evidence of attempts to find other quarters, and as early as April he had personal checks with the address of these quarters printed on them.

It is the employee's responsibility to provide evidence of his intent to remain in the quarters only temporarily. See Myroslaw J. Yuschinshin, B-190473, June 18, 1979; and Charles L. Avery, B-179870, Sept. 26, 1974. "The absence of any evidence supporting an intent to obtain a permanent residence elsewhere mitigates against reimbursement."

Myroslaw J. Yuschinshin, supra. The mere fact that Mr. Smiley entered into a lease that could have terminated after 2 months is not sufficient for us to conclude that his quarters were temporary in nature considering the other factors that indicate permanence.

Regarding his mother's TQSE, Mr. Smiley stated that out of concern for her health and the possible negative effects the stress of the move could have on her, he decided it would be best if she occupied temporary quarters at a "congregate living residence" "strictly on a temporary month-to-month basis." Hence, he placed her in the Chamblee, Georgia, personal care home. Under 5 U.S.C. § 5724a(a)(3) and implementing regulations the subsistence expenses of the employee and his immediate family may be paid. "Immediate family" is in turn defined at FTR chapter 2-1.4d(1) as including only certain "named members of the employee's household at the time he/she reports for duty at the new permanent duty station." One of the family members named by the FTR is a dependent parent. Thus the term "immediate family" as applied to an employee's parent assumes both that the parent is dependent and a member of the employee's household at the date of transfer. See Marjorie J. Lowry, B-189818, Feb. 14, 1978.

Although the agency asked Mr. Smiley for information to support his claim that his mother was dependent on him, he has failed to provide evidence either that his mother was dependent on him or that she had been a member of his household at the date of transfer. Without such evidence, Mr. Smiley's claim for his mother's TQSE must be denied.

In addition, even if Mr. Smiley establishes that his mother was dependent on him and was a member of his household, he must also show that his mother's placement in the home was temporary and was clearly caused by his transfer. See B-179556, May 14, 1974. Thus, if she merely moved from a permanent care facility near the old station to one near the new station, or if her residence there was for an indefinite period or for a reason unrelated to the transfer, she would not qualify for TQSE. We agree with the agency that, under the circumstances, the current record is insufficient in this regard to support payment of TQSE.

Movement of Household Goods

Although prior to his move Mr. Smiley requested that he be allowed to move his household goods under the commuted rate system, the Park Service, following normal procedures, determined that a cost comparison required that the goods

be moved using a commercial carrier under a Government Bill of Lading (GBL) and so advised Mr. Smiley.^{1/} Although Mr. Smiley still feels he should have been allowed to use the commuted rate system, once the administrative determination is made as to the more economical method, the employee's reimbursement is limited to that method. See Timothy Shaffer, B-223607, Dec. 24, 1986. Therefore, Mr. Smiley's reimbursement must be based on the GBL method.

Mr. Smiley elected to move the goods himself using rental vehicles, however, and seek reimbursement of his expenses. Prior to the move he asked the Park Service if he could be reimbursed for the cost of having someone fly from Atlanta to Florida to drive his vehicle to Atlanta, and he was advised that he could not. Notwithstanding that advice, Mr. Smiley arranged to have a friend fly by commercial airline to Florida and return with Mr. Smiley to Atlanta. Mr. Smiley indicates that his friend drove a rental truck loaded with Mr. Smiley's household goods from Florida to Atlanta while Mr. Smiley drove his own automobile with a rental trailer also loaded with his goods. As a part of his claimed reimbursement for his household goods moving expenses, Mr. Smiley claimed the cost of his friend's airfare to Florida and his friend's meals consumed on the return trip to Atlanta.

When an agency determines that an employee's household goods are to be moved under the GBL method and the employee chooses to move them himself, his reimbursement for the expense of moving is limited to "actual expenses (e.g., vehicle rental fee, material handling equipment, packaging materials, fuel, toll charges, etc.)," not to exceed what it would have cost the government to move the goods by commercial carrier under a GBL. See 41 C.F.R. § 101-40.203-2(d), and Timothy Shaffer, supra.

Mr. Smiley argues that by including his friend's airfare and meals in his expenses, the amount he claims still would not exceed what the move would have cost by using a commercial carrier under a GBL, and thus, he should be allowed reimbursement for his friend's expenses also.

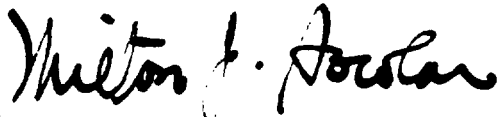
We have authorized reimbursement to an employee for the actual cost incurred for labor to help pack or load household goods when appropriate receipts are furnished

^{1/} At the time Mr. Smiley moved, the "GBL method" was known as the "actual expense method." Effective July 3, 1986, the descriptive terminology was changed to prevent any confusion. See Timothy Shaffer, B-223607, Dec. 24, 1986.

to substantiate that payment was actually made for that purpose. We have denied payment, however, in cases such as this where the services appear to have been rendered gratuitously, rather than pursuant to an arms-length contract. See Jerrold Schroeder, B-226868, Nov. 4, 1988. Therefore, notwithstanding Mr. Smiley's contentions, he may not be reimbursed for his friend's airfare and meals.

Conclusion

For the reasons outlined above, Mr. Smiley's claims may not be allowed.

for 
Comptroller General
of the United States