



Comptroller General
of the United States

Washington, D.C. 20548

B-227513

September 8, 1987

To the Congress of the United States:

Pursuant to 31 U.S.C. § 3702(d) (1982), we submit the following report on the claim of Mr. Samuel R. Newman, which we believe deserves the consideration of the Congress as a meritorious claim.

Mr. Samuel R. Newman, a resident of Long Island, New York, and an employee of the Federal Aviation Administration (FAA), was issued a travel order on September 3, 1985, to attend a course at FAA's Management Training School in Lawton, Oklahoma, from September 24 through October 3, 1985. On September 27, 1985, while Mr. Newman was attending the school, Hurricane Gloria caused considerable damage to Long Island which led the President to declare it a disaster area.

Mr. Newman's property was damaged, and his house was without electricity for 5 days. When Mr. Newman became aware of these and other family difficulties, he discussed the situation with his instructor, who advised him to return home prior to completing his temporary duty assignment. Mr. Newman returned home on September 28, 1985, and on November 20, 1985, he was erroneously reimbursed \$324.29 for his travel and transportation expenses to return home.

At the time Mr. Newman returned to his residence, there was no authority to reimburse an employee for his return travel expenses, when, for personal reasons, the employee abandoned his temporary duty station. See 47 Comp. Gen. 59 (1967); Dwain F. Pridemore, B-216477, November 15, 1984. Further, DOT Order 1500.6A, Chap. 4, para. 4-0108, provided that an employee may be reimbursed only for the expense of travel to the point of abandonment when a temporary duty assignment is not completed.

However, with the passage of Pub. L. 99-234, title I, § 102, January 2, 1986, 99 Stat. 1756, title 5 of the United States Code was amended to provide reimbursement of travel expenses under similar circumstances to that experienced by

Mr. Newman. See 5 U.S.C. § 5702(b)(1)(B), as amended (Supp. III 1985). This change in the law, however, was not made retroactive and therefore does not apply to Mr. Newman's travel. The authority for waiver of erroneous payments was amended by Pub. L. 99-224, § 1(a), December 28, 1985, 99 Stat. 1741, to provide waiver authority under 5 U.S.C. § 5584 for claims involving an erroneous payment of travel expenses. Unfortunately, this too is not applicable to Mr. Newman's situation since it applies only to payments made after December 28, 1985. See section 4 of Pub. L. 99-224.

The FAA submitted a report to our Office on this matter dated August 12, 1986 (copy enclosed). In its report the FAA recommends payment and states that had the waiver statute been effective, Mr. Newman's debt would have been waived because collection would be against equity and good conscience and not in the best interest of the Government. However, since there is no legal basis for allowing Mr. Newman to retain the travel expenses, the Federal Government will have to pursue collection action unless Congress enacts legislation relieving him of liability for repaying the expenses.

We recommend that the Congress enact legislation relieving Mr. Newman of liability based on the equitable considerations present in this case. The record indicates that Mr. Newman performed return travel under emergency conditions, with permission of his instructor, under the reasonable belief that his expenses would be paid. There is nothing to indicate that Mr. Newman had knowledge or reason to know that the payment for travel was, in fact, erroneous. In these circumstances we believe that collection action would be against equity and good conscience and not in the best interests of the United States.

If the Congress concurs in our recommendation, enactment of a statute in substantially the following language will accomplish the relief recommended:

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that Samuel R. Newman, an employee of the Federal Aviation Administration, is hereby relieved of liability to the United States in the sum of \$324.29, representing an erroneous payment of travel expenses incident to his emergency return travel from his temporary duty station in Lawton, Oklahoma, in 1985. In the audit and settlement of the accounts of any

certifying or disbursing officer of the United States, credit shall be given for the amount for which liability is relieved by this Act."

for *Hilton L. Fowler*
Comptroller General
of the United States

Enclosure