



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

DUM

Matter of: Darlene Wyrick - Claim for Per Diem, Mileage and
Temporary Quarters Subsistence Expenses -
Ineligible Dependent

File: B-233353

Date: June 2, 1989

DIGEST

A transferred employee was issued travel orders authorizing reimbursement of travel and temporary quarters subsistence expenses for herself, her spouse, and her daughter who was 22 years old. The employee was given a travel advance based on the estimated expenses for herself and the two family members. After she incurred expenses in reliance on the orders and submitted a voucher, the agency realized that the daughter was over 21 years old and precluded by regulation from being considered as a family member of the employee for purposes of relocation expenses. Her claim for travel expenses for her daughter may not be allowed. However, since she incurred expenses for the daughter in reliance on the erroneous orders, her debt for the portion of her travel advance still outstanding is subject to consideration for waiver. Case is remanded to the agency for computation of the debt subject to waiver.

DECISION

Ms. Darlene Wyrick, an employee of the Department of Agriculture, appeals the Claims Group's denial of her claim for travel allowances and temporary quarters subsistence expenses for her 22-year old daughter, Kimberly. We sustain the action taken by the Claims Group. However, since the claimant had received erroneous travel orders authorizing her daughter's expenses and she received a travel advance out of which she paid a substantial portion of her daughter's expenses, her indebtedness for the portion of the travel advance outstanding after deducting her allowable expenses of relocation is subject to consideration for waiver.

In early September 1987, Ms. Wyrick transferred from Edina, Missouri, to a GS-9 position in Washington, D.C. Prior to departing from Missouri, she received a travel authorization stating that for herself, her husband, and her child she

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was authorized a mileage allowance, per diem en route, and temporary quarters subsistence expenses upon arrival at the new duty station. Her child's age was shown clearly on the travel authorization as 22. Ms. Wyrick also received a travel advance of \$8,000 to defray the authorized expenses.

Ms. Wyrick arrived at the new duty station on September 9, 1987, with her family and they resided in temporary quarters until November 6, 1987. Ms. Wyrick then filed a voucher seeking \$8,366.08 in reimbursable expenses. At this point the agency realized that Ms. Wyrick's daughter had been over 21 years old at the time of transfer and was thereby precluded by regulation from being eligible to be considered as a member of the employee's immediate family. Consequently, Ms. Wyrick was advised that she could not be reimbursed for any expenses she incurred on behalf of her daughter. See Federal Travel Regulations, para. 2-1.4d (Supp 1, Nov. 1, 1981)^{1/}.

Ms. Wyrick appealed the matter to our Claims Group which disallowed the portion of her claim related to her daughter's expenses in view of the applicable regulations.

Ms. Wyrick has appealed the Claims Group's determination, arguing that she relied on the erroneous authorization in her travel orders when she and her family incurred the expenses. She explains that she, her husband and her daughter lived together, pooling their incomes. Had she not been authorized relocation expenses for her daughter, as well as for her husband and herself, she would not have accepted the transfer because she could not have afforded the move. She states that her daughter's income was near the minimum wage, her husband was a salesman whose income was based on his sales and it took several months for him to establish accounts after the move, and her own GS-9 salary was insufficient to support the family, particularly while incurring the extra expenses of living in temporary quarters. Pending our decision, Ms. Wyrick has deferred filing a reclaim voucher with her agency seeking reimbursable expenses for herself and her spouse.

Ms. Wyrick is not entitled to be reimbursed for her daughter's expenses since her daughter did not qualify as an eligible family member under the regulations promulgated pursuant to law. The erroneous travel authorization does not serve to increase her entitlement since the government is not bound by the acts or advice of its agents which are contrary to law. 54 Comp. Gen. 747 (1975). Consequently,

^{1/} Incorp. by ref., 41 C.F.R. § 101-7.003 (1988).

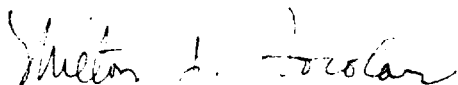
to the extent that her allowable expenses for relocation are less than the \$8,000 travel advance she received, Ms. Wyrick is indebted to the government.

It appears, however, that Ms. Wyrick's debt is subject to consideration for waiver under 5 U.S.C. § 5584 (1982 and Supp. IV 1986). Under that statute, as amended effective December 28, 1985, we may waive a debt arising out of an erroneous payment of travel and transportation expenses where collection would be "against equity and good conscience and not in the best interest of the United States" and there is no indication of "fraud, misrepresentation, fault, or lack of good faith" on the part of any person having an interest in obtaining a waiver of the claim. A travel advance is erroneous and subject to waiver to the extent it was made to cover the expenses erroneously authorized and the employee actually spent the advance in reliance on the erroneous travel orders. Major Kenneth M. Dieter, B-226842, June 28, 1988, 67 Comp. Gen. ____; Rajindar N. Khanna, B-225263, June 28, 1988, 67 Comp. Gen. ____ . Waiver, however, is only appropriate to the extent that an employee is indebted to the government for repayment of the amount advanced. Therefore, if an employee has both legitimate expenses and expenses which should not have been authorized, the travel advance must first be applied against the legitimate expenses. Any outstanding amount of the advance may then be applied against the erroneously authorized expenses and that amount could be considered for waiver. See Khanna, above.

As a general rule, we presume that expenses incurred in accordance with erroneous orders were made in reliance on those orders, although under certain circumstances we would not presume detrimental reliance. See Dieter, supra. In this case in view of Ms. Wyrick's explanation of her family financial situation and her statement that she could not have afforded to accept the transfer had relocation expenses not been authorized for all three family members, it appears that Ms. Wyrick did rely on the erroneous authorization in incurring the travel and temporary quarters subsistence expenses for her daughter. Thus, the present case does present a situation in which consideration should be given to waiver of Ms. Wyrick's indebtedness for the outstanding travel advance to the extent that her indebtedness results from expenses erroneously authorized for her daughter. We cannot determine precisely what the amount of the debt is

because of the manner in which Ms. Wyrick's original voucher was prepared.^{2/}

Accordingly, we are remanding the case to the agency, and the agency, with Ms. Wyrick's assistance, should calculate her precise entitlements and subtract this from her \$8,000 travel advance to determine her debt. The agency should then calculate the daughter's expenses that would have been reimbursable had the daughter not been over 21. The matter then should be returned to us for waiver consideration.



Acting Comptroller General
of the United States

^{2/} For most days, Ms. Wyrick totalled the lodging and meal expenses for herself and her family. She now will have to indicate what portion of these expenses were incurred by her daughter and spouse. Her allowable entitlement appears to be in the range of \$6,000 to \$6,300 which means that in the absence of waiver she would have to repay \$1,700 to \$2,000.