

Speight



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Spc. Kuka Fareti--Reimbursement of Travel Expenses
File: B-233593
Date: January 19, 1989

DIGEST

Under applicable Department of Defense regulations, round-trip commercial transportation may be provided to a member incident to emergency leave upon a determination that, considering the nature of the emergency involved, space required government transportation is not reasonably available. The cost of such transportation for a member stationed in the Continental United States (CONUS) whose place of domicile is outside CONUS will not exceed the cost of government procured commercial air travel. Erroneous advice provided by an agent of the government concerning the availability of Military Airlift Command transportation or the amount of reimbursement that the member is entitled to does not provide a basis for reimbursement of costs which are not statutorily authorized.

DECISION

This action is in response to a request by Spc. Kuka Fareti, an enlisted member of the Army, for reconsideration of our Claims Group's disallowance of his claim for travel expenses.^{1/} The claim was disallowed because, although Spc. Fareti was erroneously informed otherwise, his entitlement to transportation costs is limited to the cost of government procured commercial air transportation. The disallowance is sustained for the reasons set forth below.

BACKGROUND

Spc. Fareti is currently stationed at Fort Campbell, Kentucky. In 1986, while attending training at Ft. Benjamin Harrison, Spc. Fareti took emergency leave to visit his wife

^{1/} Spc. Fareti's claim was disallowed by settlement No. Z-2865627 issued by our Claims Group on September 1, 1988.

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who had been hospitalized in Hawaii. At the time of the emergency, Spc. Fareti was erroneously led to believe that he was not entitled to transportation at the government's expense. Accordingly, he arranged for commercial transportation at his own expense. Orders, issued approximately 6 months later, authorized the use of Military Airlift Command transportation incident to Spc. Fareti's emergency leave. An amendment to those orders subsequently authorized reimbursement for commercial transportation.

In accordance with the amended travel orders, Spc. Fareti requested reimbursement for the entire cost of the commercial air fare. However, because reimbursement for the cost of commercial air fare is limited to the cost of government procured commercial air fare to and from the international airport nearest the location of the member when he receives notice of an emergency, reimbursement was limited to \$546.00. Dissatisfied, Spc. Fareti submitted a claim to our Claims Group for the difference between the amount that he paid for the air fare and the amount that he was reimbursed. Our Claims Group denied the claim on the grounds that "in the absence of specific authority therefor, the United States is not liable for the erroneous actions of its officers, agents or employees, even though committed in the performance of their official duties." Spc. Fareti appealed this determination, stating that he believes it to be unjustifiable to deny his claim on the ground that the government is not legally liable for the acts of its agent. He also asserts that if it were not for the government's erroneous acts he would not have incurred the disputed expense.

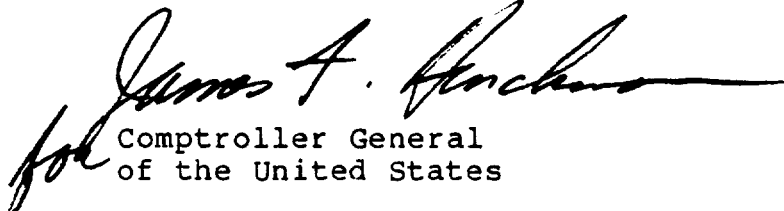
ANALYSIS

It is a well settled rule of law that the government cannot be bound beyond the actual authority conferred upon its agents and employees by statute or by regulations. This is so whether the agent was aware of the limitation on his authority or not. See Claude R. Hall, B-223737, June 24, 1987. Therefore, Spc. Fareti's travel expenses can only be paid pursuant to specific statutory authority and within the limitations set out under applicable regulations.

The applicable provisions of Volume 1, Joint Travel Regulations, paragraph M5800, implementing 37 U.S.C. § 411d, effective at the time, provide that round-trip commercial transportation may be provided to a member incident to emergency leave granted in accordance with regulations of the service concerned upon a determination that, considering the nature of the emergency involved, space required government transportation is not reasonably available.

In the present case, there is no indication that such a determination was made prior to Spc. Fareti's emergency leave. However, we will treat this case as if such a determination had been made in light of the Commanding Officer's actions and the amended order. The regulations further state that the cost of commercial transportation authorized or approved for a member stationed in the Continental United States whose place of domicile is outside the Continental United States will not exceed the cost of government procured air travel from the international airport nearest the location of the member when he receives notice of the personal emergency, to the international airport in Hawaii, in this case, and return. Since these regulations were issued pursuant to statutory authority, they have the force and effect of law and the provisions therein may not be modified by this office regardless of the extenuating circumstances. See 49 Comp. Gen. 145 (1969). Accordingly, our Claims Group acted correctly in refusing to reimburse Spc. Fareti for an amount greater than the cost of government procured commercial air fare since there is no authority to do so.

The adjudication of our Claims Group is affirmed.


for Comptroller General
of the United States