



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Daniel J. Newell - Waiver - Erroneous Travel Advance
File: B-233826
Date: October 24, 1989

DIGEST

A transferred employee was issued travel orders erroneously authorizing reimbursement of temporary quarters subsistence expenses (TQSE) and was given a travel advance. After he incurred expenses in reliance on the orders and submitted voucher, the agency discovered the error. Repayment of the portion of his travel advance for TQSE still outstanding is waived under 5 U.S.C. § 5584, as amended, since the advance was made to cover expenses erroneously authorized and the employee actually spent the advance in good faith reliance on the erroneous travel orders.

DECISION

The Chief, Travel Section of the Department of Energy, Bonneville Power Administration, Portland, Oregon, forwarded the claim of Mr. Daniel J. Newell, for waiver of his indebtedness. Mr. Newell had been erroneously advanced \$6,300 for temporary quarters subsistence expenses (TQSE) to which he was not entitled. For the reasons stated below we grant waiver for \$6,268.85 of this indebtedness.

BACKGROUND

Mr. Newell was selected for a permanent change of duty station from Vancouver, Washington, to Alvey Substation near Eugene, Oregon. The record indicates that prior to Mr. Newell's transfer to Alvey Substation, his residence was located in Salem, Oregon, a distance of approximately 61.2 miles from Vancouver and approximately 69.5 miles in the opposite direction to his new duty station, Alvey Substation.

A Travel Authorization dated March 29, 1988, was incorrectly completed by the Travel Section approving 30 days TQSE to which Mr. Newell was not entitled. The travel authorization was amended May 16, 1988, to allow a second 30 days, and

again on June 23, 1988, to authorize a third 30 days, for a total of 90 days. Based on the incorrect authorization, the Travel Section advanced Mr. Newell \$6,300 for TQSE.

Before the Travel Section approved the voucher submitted by Mr. Newell claiming TQSE, Travel Section personnel were made aware that it was 8.3 miles farther from Mr. Newell's former residence in Salem to his new duty station at Alvey Substation than to his former official station in Vancouver. Therefore, the move did not comply with the regulatory requirement for TQSE that the commuting distance from the employee's old residence to the new permanent duty station exceed by more than 40 miles the distance between the old residence and the old duty station. See Federal Travel Regulations, para. 2-5 (Supp. 10, March 13, 1984), incorp. by ref., 41 C.F.R. § 101-7.003 (1988). When the error was discovered, Mr. Newell was notified by Voucher Audit Statement dated September 8, 1988.

According to the voucher submitted by Mr. Newell, he incurred temporary quarters subsistence expenses in the total amount of \$6,268.85.^{1/} The agency recommends waiver of the travel advance in this case since Mr. Newell incurred these expenses in reliance on the erroneous orders, the error was completely the fault of the Travel Section, and Mr. Newell did not contribute to the mistake.

OPINION

Under the authority of 5 U.S.C. § 5584 (1982 and Supp. IV 1986), overpayments of travel and transportation expenses may be waived 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.

We have held a travel advance payment to be 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, 67 Comp. Gen. 496 (1988); Rajindar N. Khanna, 67 Comp. Gen. 493 (1988). However, waiver is only appropriate to the extent that an employee is indebted to the government for repayment of the amounts

^{1/} An agency official has advised us informally that the voucher has been audited and this amount would be fully allowable but for the 40-mile rule.

advanced. So, for example, 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.

In the present case, Mr. Newell received travel advances totalling \$9,739.61 which included \$6,300 for the erroneously authorized temporary quarters subsistence expenses. The agency settled with Mr. Newell for all relocation expense reimbursements to which he was otherwise entitled and offset these amounts from the travel advance, leaving a balance of \$6,300, which corresponded to that portion of the advance for TQSE. Therefore, we consider the remaining portion of the travel advance payment which Mr. Newell received, up to the amount of \$6,268.85, to be erroneous and subject to waiver since it was made to cover the expenses erroneously authorized and incurred by Mr. Newell in detrimental reliance on the erroneous order. See John Osborn III, B-231146, Mar. 10, 1989.

As a general rule, we presume that expenses incurred in accordance with erroneous orders were made in reliance on those orders. See Dieter, Supra, and Khanna, supra. In this case, in view of the fact that Mr. Newell was commuting a distance of approximately 61 miles to his old duty station, it appears reasonable to assume that Mr. Newell did rely on the erroneous authorization in incurring the temporary quarters subsistence expenses claimed rather than continuing to commute the approximately same distance (69 miles) to his new duty station until he occupied his new residence.

Further, there is nothing in the record to indicate any fraud, misrepresentation or fault on Mr. Newell's part. Rather, it was reasonable for Mr. Newell to proceed in reliance on the erroneous order since he had no reason to believe it was improper.

Accordingly, repayment of \$6,268.85 of the erroneous amount advanced to Mr. Newell is hereby waived.



Acting Comptroller General
of the United States