



**The Comptroller General  
of the United States**

Washington, D.C. 20548

## Decision

**Matter of:** Sherry C. Boutwell - Waiver - Erroneous Travel Advance  
**File:** B-237169  
**Date:** March 23, 1990

### DIGEST

In reliance on erroneous advice, a new employee incurred per diem expenses during orientation at her permanent duty station. While her claim for per diem may not be paid, waiver of her remaining indebtedness for the travel advance may be considered under 5 U.S.C. § 5584 (1988) if the employee incurred the expenses in good faith reliance on erroneous agency advice and if collection of the debt would be against equity and good conscience.

### DECISION

The issue in this decision concerns a claim for per diem expenses which were erroneously authorized to a new employee at her first duty station. For the reasons that follow, we hold that, while the claim may not be paid, the employee's outstanding indebtedness for the travel advance may be considered for waiver.

### BACKGROUND

A regional fiscal management officer of the Internal Revenue Service, San Francisco, California, has requested an advance decision concerning the claim of Ms. Sherry C. Boutwell for certain per diem expenses. Ms. Boutwell was hired by the Internal Revenue Service and directed to report to Laguna Niguel, California, her permanent duty station, on July 5, 1988, for a 1-week orientation. She was then to report to Riverside, California, for a 6-week training session.

The record indicates she was authorized two travel advances totaling \$3,000 for per diem for the first 7 weeks of employment (July 5 through August 24, 1988), including the week of July 5-9, for orientation. However, Ms. Boutwell was informed on July 28, 1989, that she was not eligible for per diem for the week of orientation. Thus, her travel

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voucher claiming per diem in the amount of \$543.47 for the week of orientation at Laguna Niguel was denied by the agency on the basis that the Federal Travel Regulations do not allow per diem at the permanent duty station.<sup>1/</sup>

Ms. Boutwell asserts that she incurred the per diem expenses because she relied, in good faith, on the erroneous advice of the agency. She now requests that the per diem expenses incurred during orientation be allowed.

#### OPINION

Under the provisions of FTR, para. 1-7.6a, an employee may not be paid per diem at the permanent duty station. We have held that erroneous advice to the contrary does not bind the government beyond the actual authority conferred upon its agents by statute or regulation and that the government is not prevented from repudiating erroneous advice given by one of its officials. See Rajindar N. Khanna, 67 Comp. Gen. 493, 494 (1988); James A. Schultz, 59 Comp. Gen. 28, 31 (1979). Hence, we conclude that Ms. Boutwell has no legal right to allowance of the per diem expenses she incurred during orientation at her permanent duty station.

However, under the authority vested in the Comptroller General by 5 U.S.C. § 5584 (1988), an employee's liability for overpayments of travel expenses may be waived where collection would be "against equity and good conscience and not in the best interests of the United States," and where 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 that where an employee has incurred expenses as the result of an erroneous travel advance and the employee actually spent the advance in reliance on its erroneous authorization, waiver is appropriate under section 5584. See Khanna, supra. However, waiver is only appropriate to the extent that an employee is indebted to the government for repayment of the amount advanced after the advance has been applied against the legitimate expenses. Major Kenneth M. Dieter, 67 Comp. Gen. 496 (1988).<sup>2/</sup>

In the present case, Ms. Boutwell claimed legitimate travel expenses in the amount of \$2,607.04 for the period from

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<sup>1/</sup> FTR (Supp. 24, July 15, 1987), incorp. by ref., 41 C.F.R. § 101-7.003 (1988).

<sup>2/</sup> Companion case to Rajindar N. Khanna, 67 Comp. Gen. 493 (1988).

July 21 to August 17, 1988, and that amount was applied against her travel advances.<sup>3/</sup> Thus, since the amount of her outstanding travel advance is only \$392.96 (\$3,000 - \$2,607.04), this amount constitutes her net indebtedness for which waiver may be appropriate.<sup>4/</sup>

In the present case it is not clear from the record before us whether Ms. Boutwell relied to her detriment on the erroneous orders. She has indicated that, if travel expenses had not been authorized for her first week at her permanent duty station, she would have stayed with her brother instead of incurring motel and meal expenses. However, there is no agency report in this case indicating the agency's view on the question of detrimental reliance or whether there was any fraud, misrepresentation, fault, or lack of good faith on the part of Ms. Boutwell. See 4 C.F.R. § 92.3 (1989). Accordingly, we remand this case to the employing agency for its determination of whether to grant waiver under the provisions of 5 U.S.C. § 5584. If the agency declines to grant waiver, Ms. Boutwell may appeal to our Office.



Acting Comptroller General  
of the United States

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<sup>3/</sup> We note that she claimed and was separately paid for legitimate travel expenses in the amount of \$1,016.40 for the period from July 10 to July 20, 1988.

<sup>4/</sup> We also note that she received a travel advance of \$1,000 on September 6, 1988. In the absence of information to the contrary, we must conclude that this advance was made for other travel and would not be applied to this travel.