

Comptroller General
of the United States

Washington, D.C. 20548

Decision

AF

Matter of: Department of State's Obligation of Expenses of
Temporary Duty Travel Outside the Continental
United States

File: B-246702

Date: August 6, 1992

DIGEST

Section 10 of the Department of State Basic Authorities Act of 1956, ch. 841, 70 Stat. 890, 891 (1956) (codified at 22 U.S.C. § 2677 (1988)) authorizes the Department of State (Department) to use current year appropriations for all expenses of travel outside the continental United States when travel is ordered and begins in the current year, even though travel may not be completed in that fiscal year. We do not object to the Department's longstanding and reasonable determination that section 10 authorizes it to use current year appropriations for all expenses of temporary duty travel outside the continental United States, even when physical travel begins in the subsequent year, as long as the travel is ordered and a travel-related expense is incurred in the current year.

DECISION

The Inspector General (IG) of the Department of State (Department) requests a decision regarding the Department's practice of obligating all expenses of temporary duty travel outside the continental United States against the appropriation current when the travel is ordered and the first travel-related expense is incurred. Specifically, the IG asks whether the Department may obligate the expense of round trip transportation purchased prior to the end of one fiscal year, as well as per diem expenses, to that fiscal year's appropriation even though physical travel does not begin until the subsequent fiscal year. For the reasons stated below, we conclude that the Department is authorized to use current year appropriations for all expenses of temporary duty travel outside the continental United States, including transportation and per diem, when physical travel begins in the subsequent fiscal year as long as the travel is ordered and a travel-related expense is incurred in the current fiscal year.

PUBLISHED DECISION

05/15/91/149565 71 Comp. Gen. 494.

BACKGROUND

Section 10 of the Department of State Basic Authorities Act of 1956, ch. 841, 70 Stat. 830, 891 (1956) (codified at 22 U.S.C. § 2677 (1988)), provides that

[a]ppropriated funds made available to the Department of State for expenses in connection with the travel of personnel outside the continental United States, including travel of dependents and transportation of personal effects, household goods, or automobiles of such personnel shall be available for such expenses when any part of such travel or transportation begins in one fiscal year pursuant to travel orders issued in that year, notwithstanding the fact that such travel or transportation may not be completed during that same fiscal year.¹

The Department's current regulations provide that the estimated expenses of assignment travel² outside the continental United States are to be construed as valid obligations chargeable to the fiscal year in which actual travel begins. The regulations further provide that travel begins whenever any item of expense is incurred. Foreign Affairs Manual, tit. 4, § 051.3, 053.2(a) (Feb. 28, 1984). The term "incurred expense" includes inoculations, passport photos, passport fees, health certificates, copies of birth and/or marriage certificates, purchase of personnel transportation, transportation services, and transportation of things. *Id.* Therefore, the Department currently obligates the expenses of assignment travel against the appropriation current in the year in which the travel is ordered and the first travel-related expense is incurred.

The Department distinguishes between overseas travel and stateside travel for purposes of its travel obligation criteria. However, it does not distinguish between

¹Despite the presence of the phrase "shall be available," section 10 has been construed as permissive rather than mandatory. Accordingly, section 10 authorizes the Department to record obligations related to travel outside the continental United States in the manner prescribed, but does not require it to do so. See 42 Comp. Gen. 699, 702 (1963); B-147519-O.M., Mar. 26, 1962.

²The Department's regulations characterize travel related to transfer or permanent change of station as "assignment travel."

assignment and temporary duty travel outside the continental United States. See 4 F.A.M. § 051.3. Under 4 F.A.M. § 053.2(b), the expenses of such temporary duty travel "are construed as valid obligations chargeable to the fiscal year in which the authorization is issued, provided an expense is incurred prior to (the end of the fiscal year) same as for assignment travel . . ." (emphasis added). Under this regulation, the Department obligates the expenses of temporary duty travel outside the continental United States against the appropriation current when the travel is ordered and the first travel-related expense is incurred. The Department obligates the expense of round trip transportation purchased prior to the end of a fiscal year against that fiscal year's appropriation even though physical travel may not begin until the following fiscal year. In addition, the Department obligates the expenses of per diem, and presumably any other expenses associated with the employee's travel to that fiscal year as well.

The Inspector General raises no objection to the Department's regulations and practices regarding assignment travel outside the continental United States. However, the Inspector General argues that the Department's practices regarding temporary duty travel outside the continental United States are inconsistent with the language and intent of section 10. In addition, the Inspector General argues that the practices described are inconsistent with longstanding rules pertaining to the allocation of expenses of travel spanning more than one fiscal year.

DISCUSSION

The Department has long considered section 10 applicable to both temporary duty and assignment travel outside the continental United States. The Department's early regulations implementing section 10, as well as its predecessors,³ made no specific reference to either temporary duty or assignment travel, but merely provided that all expenses in connection with travel of personnel outside the continental United States were to be charged to the appropriation available for the fiscal year within which the travel was ordered and commenced. E.g., Finance Circular No. 18, June 28, 1949; Foreign Service Manual, tit. 5, § 143.3 (Mar. 19, 1951). However, since 1965, the

³A provision similar to section 10 was originally included as a general provision in the Department's appropriation for fiscal year 1949 and was repeated in each annual appropriation act until 1956. See, e.g., section 106 of the Department of State Appropriation Act, 1949, ch. 400, 62 Stat. 305, 316 (1948).

Department's regulations have referred specifically to both assignment and temporary duty travel. See Foreign Affairs Manual Circular No. 312, May 19, 1965; 4 F.A.M. § 053.2, Dec. 20, 1966 and its amendments through February 28, 1984. In addition, since 1951, the Department's regulations have consistently provided that travel may be construed to begin whenever any item of expense is incurred. See 5 F.S.M. § 143.3, Mar. 19, 1951 and amendments through February 28, 1984.

Courts and this Office have consistently held that an agency's interpretation of a statute that it is responsible for implementing is entitled to substantial deference. Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837, 843-844 (1984); B-218497.2, Oct. 22, 1991. If the agency's interpretation is reasonable, it should be upheld. Train v. Natural Resources Defense Council, Inc., 421 U.S. 60, 87 (1975); Unemployment Compensation Comm'n v. Aragon, 329 U.S. 143, 155-156 (1946).

Application of Section 10 to Temporary Duty Travel

In view of the language of section 10 and its legislative history, the Department's decision not to distinguish between temporary duty and assignment travel is reasonable. On its face, section 10 draws no distinction between temporary duty travel and assignment travel. Rather, it only distinguishes between domestic travel and travel outside the continental United States. In this regard, the Department's regulations are perfectly consistent with the statute.

In addition, the Department's interpretation of section 10 furthers the statute's purpose. The legislative history of section 10 clearly establishes that Congress intended to allow the Department more flexibility than other agencies with respect to the expenses of travel outside the continental United States. Discussing the purpose of the bill that became section 10, the House Committee on Foreign Affairs explained that, like its predecessors in annual

'Several editions of the Department's regulations prior to 1965 provided that the purchase of personnel transportation did not constitute an "incurred expense" for purposes of determining the fiscal year in which to obligate all travel expenses. See, e.g., 5 F.S.M. § 143.3, Feb. 19, 1962. The Department's 1965 circular addressing obligation validity criteria contained no reference to the purchase of personnel transportation and subsequent regulations have specifically included the purchase of personnel transportation in the definition of "incurred expense."

appropriation acts, the bill was designed to alleviate the administrative difficulties arising from decisions of this Office requiring agencies to charge expenses of travel spanning more than one fiscal year to the fiscal years in which the expenses are incurred.⁵ See H.R. Rep. No. 2508, 84th Cong., 2d Sess., 17, reprinted in 1956 U.S. Code Cong. & Admin. News 4017, 4031; 42 Comp. Gen. at 701; B-147519-O.M.A. at 6. Moreover, although the House and Senate Committees described the Department's administrative difficulties and the effect of the proposed relief in the context of a planned transfer program, both Committees cited decisions of this Office applicable to temporary duty as well as assignment travel expenses. See H.R. Rep. No. 2508 at 17; S. Rep. No. 1175, 84th Cong., 1st Sess., 7-8 (1955) (both citing 26 Comp. Gen. 961 (1947) and 27 Comp. Gen. 764 (1948)). We therefore do not object to the Department's longstanding position that section 10 applies to temporary duty travel outside the continental United States.

Beginning of Temporary Duty Travel Under Section 10

Having considered the scope of section 10, we now consider the Department's position on when temporary duty travel begins under section 10. As previously discussed, the Department considers temporary duty and assignment travel outside the continental United States to begin when the travel is ordered and a travel-related expense is incurred.

In 30 Comp. Gen. 25 (1950), we addressed the meaning of the phrase "when any part of such travel or transportation begins" in the context of section 106 of the Department of State Appropriation Act for fiscal year 1950, ch. 354, 63 Stat. 447, 457 (1949), one of several predecessors of section 10. We concluded that travel or transportation begins when the first travel-related expense is incurred. 30 Comp. Gen. at 27. Accordingly, we held that the Department could consider incidental activities to be part of travel or transportation for purposes of determining the appropriation to be charged.

Our decision at 30 Comp. Gen. 25 did not specifically address expenses of temporary duty travel. However, since neither section 10 nor its legislative history compel the Department to distinguish between temporary duty and assignment travel, consistent treatment of the expenses of

⁵In 64 Comp. Gen. 45 (1984), we reversed our prior decisions regarding the expenses of assignment travel and held that where such travel spans more than one fiscal year, the expenses should be recorded against the appropriation current when valid travel orders are issued.

the two types of travel is appropriate. As long as travel is ordered and the first expense is incurred in the same fiscal year, all expenses for temporary duty travel outside the continental United States may be obligated against the appropriation available for travel in that year. Therefore, we have no objection to the Department's practice of recording an obligation for round trip transportation against the appropriation current at the time the transportation is purchased. Similarly, we have no objection to the Department's practice of recording obligations for the other expenses of travel, including per diem, to the year in which round trip transportation, or other travel-related items, are first procured.

In his request for a decision, the IG suggests that the Department's practices regarding temporary duty travel outside the continental United States are inconsistent with our decision at 70 Comp. Gen. 469 (1991). As noted previously, we held in 64 Comp. Gen. 45 that all agencies should obligate all travel and transportation expenses for assignment travel against the appropriation current when the travel is ordered. We issued 70 Comp. Gen. 469 in response to a request that we extend the holding of 64 Comp. Gen. 45 to the expenses of temporary duty travel. In 70 Comp. Gen. 469 we declined to extend our holding to the expenses of temporary duty travel spanning more than one fiscal year due to factual distinctions between assignment and temporary duty travel and the absence of a compelling reason to do so. However, section 10 provides a statutory basis for the Department to account for its temporary duty travel expenses differently from agencies subject to 70 Comp. Gen. 469. Stated somewhat differently, section 10 allows the Department, unlike other Departments and agencies of the government, to treat temporary duty and assignment travel the same for obligational purposes. Therefore, our decision at 70 Comp. Gen. 469 does not preclude the Department from prescribing consistent treatment for the expenses of temporary duty travel and assignment travel outside the continental United States.

CONCLUSION

Under section 10 of the Department of State Basic Authorities Act of 1956, the Department may charge all expenses of temporary duty travel outside the United States,

including round trip transportation and per diem, to the appropriation current when the travel is ordered and the first travel-related expense is incurred.

for *Milton J. Auster*
Comptroller General
of the United States

APPROPRIATIONS/FINANCIAL MANAGEMENT
Appropriation Availability
Time availability
Fiscal-year appropriation
Travel expenses