

Decision

Matter of: Privacy and Civil Liberties Oversight Board—Reimbursement for Employees' Home-to-Work Travel via Taxi or Rideshare Service

File: B-332633

Date: June 3, 2021

DIGEST

Absent specific statutory authority, appropriated funds generally are not available for the personal expenses of an employee such as commuting expenses. A Privacy and Civil Liberties Oversight Board (PCLOB) employee traveled from home to work via taxi or rideshare services. While transit subsidies are available to employees who use public transportation, we are aware of no statutory authority permitting PCLOB to pay for employee commutes via taxi or rideshare services. PCLOB, therefore, may not use appropriated funds to reimburse an employee for this home-to-work travel.

DECISION

This responds to a request for our decision regarding the availability of Privacy and Civil Liberties Oversight Board (PCLOB) appropriations to reimburse a PCLOB employee for expenses the employee incurs when commuting to the agency via taxi or rideshare services. Letter from Executive Director and General Counsel, PCLOB, to Comptroller General, GAO (October 16, 2020) (Request Letter). As explained below, we conclude that PCLOB may not reimburse the employee for such expenses because commuting is a personal expense of the employee.

In accordance with our regular practice, we contacted PCLOB to seek factual information and its legal views on this matter. GAO, *Procedures and Practices for Legal Decisions and Opinions*, GAO-06-1064SP (Washington, D.C.: Sept. 5, 2006), available at www.gao.gov/products/GAO-06-1064SP; Letter from Assistant General Counsel, GAO, to Executive Director and General Counsel, PCLOB (Dec. 17, 2020). PCLOB responded with its explanation of the pertinent facts and its legal analysis. Letter from Executive Director and General Counsel, PCLOB, to Assistant General Counsel, GAO (Jan. 7, (2021)) (Response Letter). We also contacted PCLOB by telephone to obtain additional information. Telephone Conversation with General Counsel, PCLOB, Chief Financial Officer, PCLOB; Assistant General Counsel for

Appropriations Law, GAO, and Law Clerk, GAO (Dec. 17, 2020) (December Conversation).

BACKGROUND

On January 31, 2020, the Secretary of Health and Human Services declared a public health emergency in response to the 2019 novel coronavirus (COVID-19). Secretary of Health and Human Services, *Determination that a Public Health Emergency Exists* (Jan. 31, 2020), available at <https://www.phe.gov/emergency/news/healthactions/phe/Pages/2019-nCoV.aspx> (last visited Apr. 19, 2021). Shortly thereafter, the Office of Personnel Management published guidance for executive departments and agencies directing them to review their continuity of operations plans and ensure that telework eligible employees were telework ready. Office of Personnel Management, *Memorandum for Heads of Executive Departments and Agencies, Preliminary Guidance to Agencies during Coronavirus Disease 2019 (COVID-19)* (Mar. 3, 2020), at 1, available at <https://www.chcoc.gov/content/preliminary-guidance-agencies-during-coronavirus-disease-2019-covid-19> (last visited Apr. 19, 2021).

PCLOB is an independent agency within the executive branch. 42 U.S.C. § 2000ee(a). PCLOB's mission is to provide oversight and advice to the executive branch to ensure that actions taken to prevent terrorism are balanced against privacy and civil liberty interests. 42 U.S.C. § 2000ee(c). In fulfilling its statutory duties, PCLOB makes use of a Sensitive Compartmented Information Facility (SCIF) for work on classified projects.¹ Response Letter, at 1. Both the PCLOB SCIF and the PCLOB employee's official worksite are located at the PCLOB office in Washington, D.C. Response Letter, at 1.

With the onset of the COVID-19 pandemic, PCLOB implemented its continuity of operations plan. Response Letter. PCLOB directed its employees to telework from March 12, 2020, through June 14, 2020, rather than reporting to their official worksites. *Id.* Beginning June 15, 2020, while employees continued to perform most of their duties through telework, PCLOB also resumed limited access to its SCIF for employees to engage in priority mission work involving classified information. Response Letter, at 1. Upon explicit instructions from PCLOB management, the PCLOB employee reported to his official worksite once or twice a month in order to work on classified matters in the SCIF. December Conversation. To travel between his home and the official worksite on these days, the employee used taxi or rideshare services. Request Letter, at 1.

¹ A SCIF is a discrete, secured area within which agency staff may store, use, discuss, and electronically process particularly sensitive classified information. B-404051, Dec. 27, 2010. PCLOB employees have Top Secret clearances and sensitive compartmented information access so they can review classified information as it relates to PCLOB's mission. Request Letter.

DISCUSSION

At issue here is whether PCLOB may reimburse its employee for expenses incurred when traveling between the employee's residence and official worksite via taxi or rideshare services.

Under the purpose statute, appropriated funds are available only for the purposes authorized by Congress. 31 U.S.C. § 1301(a). Because each authorized expense need not be stated explicitly in an appropriation, application of the purpose statute requires a necessary expense analysis, which involves a determination of whether an expenditure bears a reasonable, logical relationship to the purpose of the appropriation. See, e.g., B-303170, Apr. 22, 2005. Generally, among the expenses that bear a reasonable and logical relationship to the purpose of the appropriation are the salaries for the federal employees whose work helps to carry out the authorized purposes. Employees may then use their salaries as they see fit to provide for their personal needs, such as for their meals, clothing, commuting expenses, and other living expenses.

Generally, appropriated funds are not available for the personal expenses of an employee unless Congress enacts statutory authority specifically providing for the payment of such expenses. E.g., B-330935.2, Oct. 24, 2019; B-305864, Jan. 5, 2006; see *Navy v. Federal Labor Relations Authority*, 665 F.3d 1339, 1349 (D.C. Cir. 2012). Because commuting is a personal expense, federal employees must bear the costs of transportation between their residence and their official worksite. B-305864; B-261729, Apr. 1, 1996, see also B-318229, Dec. 22, 2009. This rule is essential for the maintenance of public trust in the use of appropriated funds. Stewardship of public money, and accountability to Congress for the proper use of public money appropriated to agencies, demands an exceptionally high bar to overcome this overarching principle. B-326021, Dec. 23, 2014, at 2; see also *Navy*, 665 F.3d at 1350.

As our prior decisions recognize, proper stewardship of appropriated funds requires consistent adherence to this settled rule, even in emergencies and other extraordinary circumstances. For instance, when a transit strike shut down public transportation, we concluded that an agency could not use its appropriations to reimburse affected employees for excess costs incurred in commuting by private vehicle or rental car. 60 Comp. Gen. 420 (1981). Similarly, we held an agency could not reimburse employees for mileage costs incurred when traveling between their residences and regular places of duty for call-back overtime duty. B-189061, Mar. 15, 1978; see also 36 Comp. Gen. 618 (1957); 36 Comp. Gen. 450 (1956).

In some instances, appropriations are available for personal expenses where Congress permits by law. For example, Congress enacted legislation authorizing agencies to provide transit subsidies for employee commutes to encourage employees to use means other than single-occupancy motor vehicles to commute to and from work. Federal Employees Clean Air Incentives Act, Pub. L. No. 103-172,

§ 2(a), 107 Stat. 1995 (Dec. 2, 1993), *codified at* 5 U.S.C. § 7905. See Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Pub. L. No. 109-59, title III, § 3049, 119 Stat. 1144, 1711–12 (Aug. 10, 2005) (requiring that agencies in the National Capital Region implement a transit benefits program as described in section 2 of Executive Order No. 13150); Exec. Order No. 13150, *Federal Workforce Transportation*, 65 Fed. Reg. 24613 (Apr. 21, 2000). PCLOB makes use of such authority by maintaining a Transit Benefit Program to reimburse employees who commute to work via public transportation. See Response Letter, at 2 and Attachment (Transit Benefit Program training). In this case, the employee did not use public transportation for which transit subsidies would have been available. Rather, the employee traveled to his official worksite by using taxi or rideshare services. Request Letter.

We are aware of no statutory provision permitting PCLOB to pay for employee commutes via taxi or rideshare services, nor has PCLOB brought such a provision to our attention. Accordingly, because travel from home to an employee's official worksite is a personal expense, and because we are aware of no statutory provision making appropriations available for this expense, agency appropriations are not available for the payment of this personal expense. Beyond the transit subsidies previously discussed, the mode of transportation does not alter this conclusion. Employees may, of course, select whatever mode of transportation best suits their needs, preferences, and budgets. See 27 Comp. Gen. 1 (1947); 16 Comp. Gen. 64 (1936); *Navy*, 665 F.3d at 1350. Should the employee here elect to use a taxi or rideshare service, the employee bears responsibility for the expense.

PCLOB posits that the employee's travel is an official expense of the agency, rather than a personal expense, because the employee engaged in agency-mandated travel to work on priority-mission projects at the PCLOB's SCIF. The agency's argument rests on the assumption that because the employee is engaged in priority mission work, the employee's commute is an official expense of the agency. Undoubtedly, all PCLOB employees, including those working virtually, engage in work critical to accomplishing the agency's mission. However, the critical nature of a particular project or of the agency's work does not transform employee commuting expenses from personal to official. No matter how critical the agency's work, commuting to the official worksite is a personal expense that the employee must bear.

PCLOB also points out that the pandemic is a once-in-a-hundred-year event that disrupted federal government operations. We agree. Employees' concerns with their safety and well-being are warranted in light of the difficult and ever-changing circumstances of the pandemic. Current circumstances have forced federal agencies to confront arduous challenges and unique burdens associated with serving their statutory missions while protecting employees' health and wellness. Even under these extraordinary circumstances, appropriations generally remain unavailable for the payment of personal expenses. Nevertheless, agencies may use

other authorities available to them by law to adapt their operations to carry out their missions while respecting employee concerns and safeguarding public health.

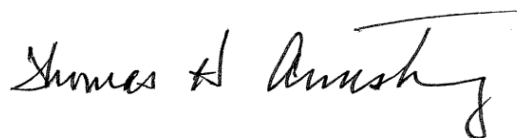
PCLOB used these authorities in this case when, at the onset of the pandemic, its employees began teleworking from home in accordance with the agency's continuity of operations policy. Response Letter. Employees continued to carry out most of their duties by telework as the pandemic continued. Once PCLOB determined that it could safely resume limited access to the SCIF, it did so under a rigid protocol to ensure employee health and safety. *Id.* Employees continued to carry out the bulk of their duties via telework while reporting to the SCIF on an as-needed basis to complete priority mission work that involves classified information and can be completed only in the SCIF. *Id.* PCLOB allows no more than four employees inside the SCIF at any one time. December Conversation. Even those mission staff working on classified matters do not report to the SCIF on a routine or daily basis; instead, they report "only as needed for their specific priority mission project, perhaps once a week (although not necessarily every week)." Response Letter.

Employees may have reservations with commuting to the office and working in proximity to others, even with safety protocols in place. Because commuting to the official worksite is a personal expense, agency appropriations are not available to pay for the commute, even if the cost of the commute increases as a result of precautions the employee may take. However, PCLOB may adopt other solutions or safeguards to help address employee concerns, as consistent with the law and with the agency's mission needs. For example, if its mission and staffing permit, PCLOB could reassign responsibilities to employees who are more comfortable with in-person attendance at the SCIF.

PCLOB has already demonstrated its capacity to respond nimbly to current circumstances with its transition to telework and its limited-access approach at the SCIF. Indeed, PCLOB noted that its limited-access approach has already succeeded in moving forward priority PCLOB projects while keeping employees safe and healthy. Response Letter, at 3. We trust that the agency will continue to find solutions that respect the needs of employees whilst fulfilling mission priorities.

CONCLUSION

Absent specific statutory authority, appropriated funds generally are not available for the personal expenses of an employee such as commuting expenses. Therefore, PCLOB may not use appropriated funds to reimburse an employee for home-to-work travel via taxi or rideshare services.



Thomas H. Armstrong
General Counsel