



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Gerald A. Cavis; Jack L. Johnson, Jr.; Stephen P. Monteiro; and
James P. McGettigan

File: B-259602

Date: November 27, 1995

DIGEST

1. An agency has appealed to the Comptroller General a settlement issued by the Claims Group granting waiver to four employees for debts incurred incident to long-term training assignments. The Claims Group granted waiver based on their determination that the employees had relied on erroneous travel orders. On appeal, however, the agency has presented additional information showing that the debts arose from excessive spending by the employees, and not in reliance on erroneous orders. Accordingly, the Claims Group's settlement is reversed.

2. Four employees assigned to long-term training assignments rented apartments on a monthly basis. Each of them submitted "composite receipts" for lodging that included rent and a number of incidental lodging expenses. They did not itemize each expense or provide receipts. The use of so-called composite receipts that purport to include all incidental lodging expenses on one receipt is contrary to the Federal Travel Regulation requirement to itemize all expenses and to provide receipts for all lodging expenses. An agency may gather its own data to determine the reasonableness of any expenses that are not properly substantiated.

DECISION

The United States Secret Service appeals Claims Group settlement, Z-2925858 et al., April 13, 1994, granting waiver to four employees for debts incurred incident to long-term training assignments performed by the employees. We reverse. Waiver is denied in all four cases.

BACKGROUND

The agency authorized the following employees to attend training at the Department of Defense Polygraph Institute (DODPI) in Anniston, Alabama, during the following periods:

<u>Employee</u>	<u>Period</u>
Gerald A. Cavis	May 11 - August 12, 1988
Jack L. Johnson, Jr.	May 11 - August 19, 1986
Stephen P. Monteiro	May 11 - August 19, 1986
James P. McGettigan	January 5 - April 16, 1986

The agency has a written directive limiting the reimbursement for training that exceeds 30 days to 55 percent of the applicable maximum per diem rate.¹ Higher rates may be approved in advance by the Office of Training. However, in these cases, officials in the Forensic Services Division (FSD), in whose division the employees worked, issued each of the employees travel orders authorizing 100 percent of the applicable maximum per diem rate. Subsequently, each of the employees submitted vouchers claiming the full 100 percent rate, which were paid.

The Financial Management Division (FMD) discovered the error in 1991, when a similarly situated employee whose travel order contained the correct 55 percent limitation questioned why other employees had not had the reduced rate applied to their travel.

FMD employees questioned the FSD supervisors and learned that these supervisors were not aware of the requirement to reduce the maximum reimbursement rate for long-term assignments and consequently had not informed the employees attending the DODPI about the requirement. The FSD supervisors asserted that the 55 percent limitation was insufficient and provided the FMD with costs FSD supervisors had determined to be reasonable. Based on this information, the FMD concluded that the reimbursement rate should be 80 percent of the applicable maximum per diem rate.

Subsequently, the FMD began to review the vouchers of other Secret Service agents who had attended the DODPI training and discovered that all of the vouchers they reviewed had been paid at the 100 percent rate. In the course of this investigation, the FMD noticed that the vouchers of some employees included lodging expenses substantially higher than the cost estimates used in FMD's analysis.

¹United States Secret Service Administrative Manual, § 3.10 VI, Jan. 1, 1995, "Attendance at meetings of organizations or professional societies and training courses."

At this point, the agency's Office of Inspection (OI) joined the investigation. This office discovered that the four individuals in this case had submitted receipts for lodging that were significantly higher than their rental payments. What the employees had done was to have the apartment managers sign so-called composite receipts that included the rent and a number of incidental lodging expenses such as electricity, telephone installation, cable television and housekeeping. These other lodging expenses were neither itemized nor documented with separate receipts.

Based on its own investigation, the OI then determined that an appropriate amount for incidental lodging expenses for the duration of the training would be \$750, based on the estimated costs for a lease application fee, electric hook-up and usage, telephone installation and usage, basic cable installation and usage, television rental, apartment set-up and cleaning costs. The OI then added this amount to the rent paid and divided this total by the number of days in the training program to determine the employees's actual daily lodging costs.² This figure then was compared to the amounts claimed by each employee.

Based on these comparisons, the agency determined that these individuals were overpaid the following amounts:

<u>Name</u>	<u>Amount</u>
Gerald A. Cavis	\$1,661.50
Jack L. Johnson, Jr.	796.90
James P. McGettigan	760.60
Stephen P. Monteiro	811.80

The agency acknowledges that the original travel orders for these employees erroneously authorized reimbursement at the full 100 percent rate. The record includes sworn statements from Messrs. Cavis, Johnson and Monteiro to the effect that they were told by persons in their respective offices and/or by other agents who had attended the DODPI to include all of their lodging expenses in a limited

²The OI could obtain the actual rent paid only for Mr. Cavis. In the other three cases, the apartment managers's records did not go back far enough to show the actual rent payments. According to the apartment managers, however, the monthly rent for one bedroom apartments during the time periods the employees stayed there was between \$400 and \$500. In recalculating the other three employees's expenses, the agency allowed \$500 for their monthly rental rates.

number of receipts and that it was not necessary to include separate receipts for each item.

Based on its review of the record submitted by the agency, the Claims Group concluded that the employees' debts resulted from reducing the allowable reimbursement rate from 100 percent of the maximum per diem rate to 80 percent of that rate, which the Claims Group noted was as an administrative error on the agency's part. Moreover, the Claims Group found no indication that the employees were aware of the error. Therefore, the Claims Group concluded that the government's claims should be waived.

The agency acknowledges that the record submitted with the original employee appeals in these cases was not clear as to the source of the erroneous payments. The repayment notices sent to the employees state that the amounts owed reflect adjustments for the lower reimbursement rate (from 100 percent to 80 percent) and disallowances for excessive incidental lodging expenses (those that exceeded \$750 for the duration of the training).

In its appeal, the agency states that the amounts allowed for each employee's actual rent, plus \$750 each for incidental lodging expenses, did not exceed the 80 percent maximum reimbursement rate. Therefore, according to the agency, the admitted failure to follow the agency directive to reduce the maximum reimbursement rate did not result in any of the debts that are the subject of the waiver requests. Rather, the agency states that the debts at issue here resulted from the disallowance of the incidental expenses that exceeded \$750, which the agency states is the most it would allow for reasonable incidental expenses based on their research. The agency asserts the employees engaged in misrepresentation, and therefore, this warrants denial of their requests for waiver. The agency also states that granting waiver in these cases would allow the employees to keep reimbursements for expenses that they did not incur, or at least could not document.

OPINION

Reimbursement for the travel and per diem expenses of employees assigned to training is authorized at 5 U.S.C. § 4109, which states that such reimbursement will be made in accordance with the authority stated in subchapter 1 of chapter 57 of title V, United States Code, which is the authority applicable to most official travel by federal employees. Regulations implementing these statutory authorities are issued by the Office of Personnel Management (OPM) with regard to training and by the General Services Administration in the form of the Federal Travel Regulation (FTR) with regard to the rules generally applicable to reimbursement for travel expenses.

The OPM regulations are found in subpart F, part 410 of title V of the Code of Federal Regulations. According to these regulations, when training exceeds 30 days, agencies may pay either 55 percent of the applicable full per diem rate specified in the FTR or, if the agency has a large number of employees trained at a facility in a single area, the agency may make a standardized payment determined by the agency and based on data of actual subsistence expenses for that area. 5 C.F.R. § 410.603(b) (1994). If the agency does not use a standardized payment, the agency must pay all or part of the actual subsistence expenses incurred by the employee. However, payment of actual subsistence expenses greater than the 55 percent rate "may be made only after documentation of the circumstances." Id.³

Although generally, travel orders may not be amended retroactively to increase or decrease the rights of an employee, we have recognized an exception to this rule when the failure to change the orders would result in the failure to carry out a non-discretionary administrative regulation or policy. Michael Kostishak, B-484460.2, Nov. 10, 1992, at 5, and cases cited therein. In this case, the agency directive limiting reimbursement after the first 30 days of training to 55 percent of the applicable maximum per diem rate unless a higher rate is approved by the Office of Training is such an administrative regulation, and, therefore, the agency properly applied the lower reimbursement rate during its review of the employees's vouchers.

The rules for payment of actual subsistence expenses are set out in Part 301-8 of the FTR. Although not stated in these rules, we have approved reimbursement as lodging expenses items normally included in the rental of hotel rooms, including many of the items claimed here, television rental, telephone usage (but not installation) and cleaning services. James L. Palmer, 56 Comp. Gen. 40 (1976).

The FTR requires employees to "itemize on the travel voucher each expense for which reimbursement is claimed on a daily basis," but allows employees to average expenses not accrued on a daily basis, such as laundry and dry cleaning. 41 C.F.R. § 301-8.5(a)(1). The FTR also requires receipts for lodging, regardless of the amount claimed. FTR § 301-8.5(a)(2). When an employee fails to itemize properly or provide receipts for expenses claimed on a voucher, agencies may use statistics, surveys or other available data to substantiate the reasonable costs for those items. Timothy J. Oliver, 71 Comp. Gen. 58 (1991). With regard to any expenses within the maximum allowable amount, agencies are expected "to determine whether the expenses are reasonable and allowable subsistence expenses, and are necessarily incurred in connection with the travel assignment." FTR § 301-8.5(b). See also Christine G. Davis, B-254837, May 27, 1994, at 4, 5.

³The agency here used standardized payments until 1986 and since then has required its employees to claim their actual expenses.

Therefore, the use of so-called composite receipts that purport to include all incidental lodging expenses on one receipt is contrary to the FTR requirement to itemize all expenses and to provide receipts for all lodging expenses. Since the employees in these cases did not properly substantiate their incidental lodging expenses, the agency properly gathered its own data to determine an appropriate amount for reimbursement. Furthermore, having determined a reasonable amount for incidental lodging expenses, the agency properly denied claims that exceeded this amount, even though some of the claimed expenses may have been properly documented.

The Comptroller General may waive claims of the United States "arising out of an erroneous payment of travel, transportation or relocation expenses." 5 U.S.C. § 5584 (1988). In this case, the employees allege that they relied on the erroneous travel order authorizing reimbursement at the 100 percent rate and on the advice of agency officials that they did not need individual receipts for each incidental lodging expense claimed. The agency acknowledges the first error. However, the record is not clear regarding who, if anyone, advised the employees that they did not need individual receipts. In any event, we conclude that the debts owed by these employees did not result from the alleged erroneous advice and therefore, may not be waived.

In recalculating their vouchers, the agency allowed the employees the full amount for their rent payments and the full amount, without regard for receipts, for what agency personnel have determined were reasonable incidental lodging expenses. Therefore, the disallowed amounts did not result from the change in the reimbursement rate or from the failure to attach receipts for each item. Rather, the agency disallowed only those amounts that exceeded the reasonable amount for incidental lodging expenses established by the agency.

Accordingly, the Claims Group's settlements in these cases are reversed and the employees's requests for waivers are denied.⁴

/s/Seymour Efros
for Robert P. Murphy
General Counsel

⁴The authority to reverse a settlement from the Claims Group granting waiver is found at 4 C.F.R. § 92.5(b) (1995).