



United States General Accounting Office
Washington, DC 20548

Comptroller General
of the United States

Decision

Matter of: Purchase of Insulated Coveralls, Vicksburg, Mississippi

File: B-288828

Date: October 3, 2002

DIGEST

Absent statutory authority, items of wearing apparel are the employee's personal responsibility, and not the government's, and appropriated funds are not available for their purchase. Our Office has recognized three statutes that permit the purchase of wearing apparel. The purchase of insulated coveralls for use by employees at the Corps of Engineers' Vicksburg Waterways Experiment Station when outside temperatures approach freezing is not authorized by any of these three statutes, and consequently is not a proper use of appropriated funds.

DECISION

The Deputy Director of Finance, United States Army Corps of Engineers, has requested an advance decision on whether it is proper to use appropriated funds for the purchase of insulated coveralls for employees to wear when outside temperatures fall below 35 degrees. Generally, it is the responsibility of the employee to report to duty properly clad to carry out his responsibilities. B-123223, June 22, 1955. There are three statutes, however, that permit agencies, in varying circumstances, to use appropriated funds to purchase clothing and other wearing apparel. None of these three authorities is available to the Corps to purchase insulated coveralls in the circumstances presented to us by the Deputy Director. We address each of the three statutes in our analysis below.

BACKGROUND

The United States Army Engineer Research and Development Center (ERDC), Corps of Engineers, Vicksburg, Mississippi, entered into an agreement with Local 3310 of the American Federation of Government Employees that would require ERDC to purchase and supply insulated coveralls to employees at the Vicksburg Waterways Experiment Station who work outside when temperatures drop below 35 degrees, including periods when the wind chill factor is below 35 degrees. The coveralls

would remain the property of the United States, and the agency would assume responsibility for cleaning and replacement of the coveralls.

ERDC Counsel has advised ERDC that obligation and expenditure of appropriated funds for the coveralls is “not one that is properly chargeable to appropriated funds,” and that “any obligation of appropriations for this expenditure would violate the purpose statute, 31 U.S.C. § 1301(a).” Memorandum from ERDC Counsel to CEERD-MS (Col. Weller) regarding “Purchase of Insulated Coveralls for Certain DPW Operations Division Employees,” Dec. 11, 2000. The local union has filed a charge of unfair labor practices with the Federal Labor Relations Authority. According to the Deputy Director of Finance, an arbitrator recommended that ERDC refer the issue to our Office for a decision, and agreed to defer his ruling pending our decision.

ANALYSIS

We generally consider items of clothing, such as the coveralls at issue here, to be a personal expense of the employee, and appropriated funds are not available for personal expenses without clear statutory authority. We stated the general rule in 1955, “that every employee of the government is required to present himself for duty properly attired according to the requirements of his position.” B-123223, June 22, 1955. In other words, it is the personal responsibility of the employee to report for duty properly clad to perform his duties. *Id.* Our Office has recognized three statutory provisions that permit the purchase of items of wearing apparel.

First, the Secretary of Defense is authorized to pay an allowance or to provide a uniform to each civilian employee of the Department of Defense who is required by law or regulation to wear a prescribed uniform while performing official duties. 10 U.S.C. § 1593. It is not clear that coveralls, in these circumstances, would constitute a uniform for purposes of section 1593. Regardless, ERDC Counsel advised our Office that there is no law or regulation requiring the wearing of coveralls as a uniform or part of a uniform. Letter from Timothy L. Felker, Jr., ERDC Counsel to Doug MacArthur, Office of General Counsel, GAO, May 15, 2002 (hereinafter, May 15 Letter). The union, in its agreement with ERDC, also did not cite or refer to any law or regulation requiring ERDC employees to wear any prescribed uniform. *See* “Insulated Coveralls Agreement,” No. 00 FSIP 105. Section 1593, consequently, does not authorize ERDC to use appropriated funds to supply the coveralls.

Second, section 7903 of title 5, U.S. Code, provides that “[a]ppropriations available for the procurement of supplies and material or equipment are available for the purchase and maintenance of special clothing and equipment for the protection of personnel in the performance of their assigned tasks. . . .” In order for an item to be authorized by section 7903, it must satisfy three tests: (1) the item must be “special” and not part of the ordinary and usual furnishings an employee may reasonably be expected to provide for himself; (2) the item must be for the benefit of the government, that is, essential to the safe and successful accomplishment of the

work, and not solely for the protection of the employee, and (3) the employee must be engaged in hazardous duty. See 32 Comp. Gen. 229 (1952); B-193104, Jan. 9, 1979.

We have generally been unwilling to hold that foul weather gear meets these standards; we view such gear as personal to the employee, with no more than an incidental relationship to their duties as employees of the government. B-230820, Apr. 25, 1988. In rare circumstances, however, we have recognized an exception. For example, in 1984, we applied these standards to allow the purchase of down-filled parkas for use by Office of Surface Mining employees in Alaska and the high country of the western states during the winter. 63 Comp. Gen. 245 (1984). In that case, however, the parkas were provided to employees who were assigned to temporary duty in Alaska and the high country. Id. at 247. Office of Surface Mining officials had advised us that heavy parkas were required as mandatory wear for personnel working in those locations. Employees assigned there only for temporary duty would not be expected to own clothing suitable for such extreme environments. Id.

In marked contrast, the instant case involves employees who want the government to supply a fairly common article of clothing—coveralls—for use at their permanent duty station. ERDC counsel argues that there is nothing “special” about the coveralls and nothing particularly hazardous about the employees’ duties. Letter from Lewis H. Burke, Agency Representative, ERDC Counsel to Doug MacArthur, Office of General Counsel, GAO, May 17, 2002. ERDC asserts that its employees permanently stationed in Vicksburg should own, and can be expected to own, climate-appropriate clothing, suitable to carry out their assigned duties. Id. We agree, and conclude that section 7903 does not authorize the purchase of the coveralls.

Although we conclude that ERDC may not purchase the coveralls under authority of section 7903, we do not read section 7903 to bar negotiations between an agency and a union with respect to matters of safety and health. See 57 Comp. Gen. 379, 382 (1978). An agency may provide protective clothing regardless of whether the purchase satisfies the three tests of section 7903 if the agency determines that the clothing is necessary to satisfy Occupational Safety and Health Act (OSHA) requirements. Id.

Section 19 of OSHA requires the head of each federal agency to establish and maintain an effective and comprehensive occupational safety and health program consistent with standards promulgated by the Secretary of Labor pursuant to the Act. Pub. L. No. 91-596, 84 Stat. 1590, 1609, 29 U.S.C. § 668 (1994). See generally 51 Comp. Gen. 446 (1972). One of these standards addresses personal protective equipment:

“ . . . Protective equipment, including personal protective equipment for eyes, face, head, and extremities, protective clothing, respiratory devices, and protective shields and barriers, shall be provided, used, and maintained in a sanitary and reliable condition wherever it is

necessary by reason of hazards of processes or environment, chemical hazards, radiological hazards, or mechanical irritants encountered in a manner capable of causing injury or impairment in the function of any part of the body through absorption, inhalation or physical contact.”

29 C.F.R. § 1910.132(a) (2001). The standard requires the employer (here, ERDC) to assess the workplace to determine if hazards are present, and, as necessary, to make available appropriate protective equipment to affected employees. *Id.* § 1910.132(d). While this standard does not directly address the hazards of cold weather or establish specific standards for protection against the elements, we have held that weather-related protective clothing, such as swamp boots to work in a jungle environment or ski boots for Forest Service snow rangers, may be furnished by the government if the agency head determines the clothing to be necessary under OSHA and its implementing regulations and standards. 51 Comp. Gen. at 448; B-187507, Dec. 23, 1976. Similarly, we would not object to an agency’s use of appropriated funds to furnish insulated coveralls so long as the agency determines the coveralls to be necessary under OSHA.

In the instant case, however, ERDC Counsel advises our Office that the agency has not determined that insulated coveralls are necessary to comply with OSHA or its implementing regulations. May 15 Letter. Section 19, therefore, does not provide authority for ERDC to use appropriated funds to purchase the insulated coveralls.

CONCLUSION

ERDC appropriations are not available to purchase the insulated coveralls. Absent statutory authority, appropriated funds are not available to purchase articles of clothing for federal employees. There are three statutes that permit agencies to use appropriations, in varying circumstances, for this purpose. None of the three statutes authorize ERDC to purchase insulated coveralls in the circumstances presented herein.

Anthony H. Gamboa
General Counsel