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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: NOAA—Reimbursing Mileage for Commuting Expenses for On-Call Emergencies

File: B-307918

Date: December 20, 2006

DIGEST

The National Oceanic and Atmospheric Administration may not use its appropriations to reimburse employees for the mileage traveled between their residences and the agency's warehouse when performing after-hours, on-call emergency services on behalf of the government because 31 U.S.C. § 1344(a)(1) specifically prohibits using appropriated funds to provide government employees with transportation between their homes and places of employment, unless otherwise authorized by law.

DECISION

The Chief of the Central Finance Office of the National Oceanic and Atmospheric Administration (NOAA), who is also a certifying officer, has requested an advance decision under 31 U.S.C. § 3529. He asks whether appropriated funds are available to reimburse NOAA employees for the mileage they must travel between their homes and offices when performing official services during on-call emergencies outside of their normal office hours. Memorandum from Auke Hart, Chief of the Central Finance Office, NOAA, to David M. Walker, Comptroller General of the United States, May 1, 2006 (Hart Memorandum). As is our usual practice when rendering a decision, we sought the views of the agency to establish a factual record and to elicit the agency's legal position on the subject matter of the request.¹ The Office of General Counsel of the Department of Commerce, who replied to us on behalf of

¹ In this matter, we wrote to NOAA's General Counsel. Letter from Thomas H. Armstrong, Assistant General Counsel for Appropriations Law, to James R. Walpole, General Counsel, NOAA, July 27, 2006. See GAO, *Procedures and Practices for Legal Decisions and Opinions*, GAO-06-1064SP (Washington, D.C.: Sept. 2006).

both NOAA and the department, does not believe appropriated funds are available for this purpose. Letter from Barbara S. Fredericks, Assistant General Counsel for Administration, Department of Commerce, to Thomas H. Armstrong, Assistant General Counsel for Appropriations Law, GAO, Oct. 30, 2006 (Fredericks Letter). For the reasons given below, we agree.

BACKGROUND

NOAA, through the National Weather Service, operates and maintains a system of weather forecasting stations across the United States and around the world. These stations function 24 hours a day, 365 days a year. Hart Memorandum, at 1. NOAA states that Congress has mandated it to “provide weather forecasting for protecting life and property for the Nation. When severe weather hits in the form of hurricanes, tornados and snow blizzards, [NOAA] has to have equipment functioning . . . so [it] can perform [its] congressional mandate to protect the public from impending severe weather.” Fredericks Letter, Enclosure 1, at 1–2. To help the National Weather Service minimize interruptions of this service, NOAA created the National Logistic Support Center (NLSC) to stockpile in its warehouse and ship replacement parts and equipment crucial to weather forecasting operations. *Id.*, Enclosure 1, at 1.

In the past, NLSC has received between 200 and 400 requests each year for emergency service outside of NLSC’s normal office hours. *Id.* NLSC schedules employees to attend to these emergency, after-hours service requests on an “on-call” basis. *Id.* For each day of the year, including Saturdays, Sundays, and federal holidays, NLSC places two staff members on-call. *Id.* at 1. On weekdays, the employees assigned to on-call duty work their normal day at NLSC and then go home for the evening. When NLSC receives a request for after-hours emergency service, it notifies the on-call employees who return from their homes to the NLSC offices, where the warehouse is also located. *Id.*, Enclosure 1, at 1. The assigned on-call employees find the required parts or equipment, prepare them for shipment to the affected weather station, deliver them to a shipping vendor, and return home. *Id.* at 1. Some days, NLSC receives multiple after-hours emergency service requests. When this happens, the on-call employees must respond to each call. Hart Memorandum, at 1–2. NLSC follows the same basic on-call process on weekends and federal holidays. *Id.*, Enclosure 1, at 1.

Pursuant to a collective bargaining agreement between the NLSC and American Federation of Government Employees Local No. 29, employees volunteer for on-call duty. *Id.*, Enclosure 1, at 5. Approximately 12 of about 30 NLSC warehouse employees participate in this voluntary arrangement.² *Id.*, Enclosure 1, at 1.

² NLSC pays the volunteers standby pay or overtime pay. In this decision, we do not address NLSC’s authority to pay standby or overtime pay. *See generally* 5 U.S.C.

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NLSC is concerned that the recent rise in gasoline prices is affecting employee willingness to continue volunteering to perform these services. Hart Memorandum, at 2. If employees stop volunteering to perform on-call services, NLSC will be compelled to require all warehouse employees to participate in the on-call service program. NLSC proposes to reimburse on-call employees for the miles they travel between their homes and the NLSC office/warehouse. NLSC believes that such reimbursements would allow the agency to continue providing these on-call services on a voluntary basis. *Id.*

DISCUSSION

As a general rule, employees must bear the costs of transportation between their residences and official duty locations, even when unusual conditions may increase commuting costs. 60 Comp. Gen. 633, 635 (1981). Congress has authorized agencies to use appropriations for the “maintenance, operation, or repair of any passenger carrier,” but “only to the extent that such carrier is used to provide transportation for official purposes.” 31 U.S.C. § 1344(a)(1). It has specified that “transporting any individual . . . between such individual’s residence and such individual’s place of employment is not transportation for an official purpose.”³ 31 U.S.C. § 1344(a)(1). *See also* B-305864, Jan. 5, 2006, at n.1.

At the same time, however, agencies may exercise administrative discretion on a temporary basis when there is a clear and present danger to government employees, or an emergency threatens the performance of vital government functions. 62 Comp. Gen. 438, 445 (1983). Section 1344 allows an agency to provide for home-to-work transportation for an employee if the agency head determines that “highly unusual circumstances present a clear and present danger, that an emergency exists, or that other compelling operational considerations make such transportation essential to the conduct of official business.”⁴ 31 U.S.C. § 1344(b)(9). This section also stipulates, however, that exceptions granted under it must be “in accordance with”

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§§ 5544, 5545; 5 C.F.R. § 551.431. *See also* B-235609, Jan. 9, 1995; B-218519, Oct. 15, 1985.

³ The Commerce Department’s internal rules and regulations are consistent with the prohibition in section 1344(a)(1). *See, e.g., DOC Travel Handbook*, § 301-4.9.

⁴ Section 1344 also authorizes agency heads to transport officers and employees between their place of employment and a mass transit facility at government expense. 31 U.S.C. §§ 1344(a)(3), 1344(g)(1). *See also* 5 U.S.C. § 7905. Since NOAA asked about mileage reimbursements, we need not consider this provision here.

section 1344(d). *Id.* The latter section limits emergency exceptions to periods of up to 15 calendar days, subject to periodic renewal for up to a total of 180 additional calendar days, under detailed procedures specified in 31 U.S.C. § 1344(d).⁵

Given the prohibition in 31 U.S.C. § 1344(a)(1), NLSC may provide home-to-work transportation to employees assigned to perform on-call, after-hours, emergency services only if it can qualify for an emergency exemption under sections 1344(b)(9) and 1344(d), or if NLSC, in the alternative, can cite some other statute which independently authorizes it to provide for home-to-work transportation for its on-call employees. The department has concluded that the emergency exception does not apply to this case, Frederick Letter, at 3, and that NOAA does not have any independent authority to reimburse its employees for mileage incurred while commuting to and from their official duty station. *Id.* at 2. We agree.

NLSC's on-call employees do not qualify for exemption under sections 1344(b)(9) and 1344(d). Section 1344(b)(9) contemplates "highly unusual circumstances present[ing] a clear and present danger, that an emergency exists, or that other compelling operational considerations make such transportation essential to the conduct of official business." 31 U.S.C. § 1344(b)(9). In this regard, NLSC argues that NOAA has a "congressional mandate to protect the public from impending severe weather." Fredericks Letter, Enclosure 1, at 2. NLSC asserts that its after-hours emergency services are "vital in ensuring [NOAA's] world-wide weather offices are available to provide accurate life-and-death local forecasts." *Id.* at 1.

However, it is not enough for NLSC to demonstrate that the danger posed under these circumstances constitutes an emergency sufficient to render home-to-work transportation for NLSC's on-call employees essential to the conduct of official business under section 1344(b)(9). NLSC must also demonstrate that emergency exceptions made under its proposal comply with section 1344(d). The limitations imposed by section 1344(d) are detailed and restrict authorized exceptions to brief, specific periods, subject to periodic extensions that may not exceed a specified number of calendar days, and encumber agencies with procedures that compel them to carefully account to Congress for each use of this authority. 31 U.S.C. § 1344(d).

⁵ The detailed procedures include requirements for written determinations that name the specific employees, explain the reasons for their exemption, and specify the duration of their exemptions; they preclude the agency head from delegating this authority to another; and they require congressional notification of the above information for each exemption granted. Other subsections require GSA to promulgate governmentwide regulations and require agencies to maintain logs detailing all home-to-work transportation provided by the agency. 31 U.S.C. §§ 1344(e), 1344(f).

It was in this regard that the department objected to NLSC's proposal. The department observed that "NOAA's overtime work is not performed on a temporary basis but instead performed on a continual basis and numerous times per week." Fredericks Letter, at 3. We agree. The record shows that NLSC schedules on-call employees for each day of the year. NLSC's proposal contemplates reimbursing employees for the mileage traveled between their homes and the NLSC warehouse for each such trip from now on—without limit or end date. For this reason, NLSC's on-call employees do not qualify under the emergency exception in 31 U.S.C. §§ 1344(b)(9), 1344(d).

Just as NLSC's proposal cannot be defended by invoking one of the exemptions set forth in section 1344, neither NLSC nor we have been able to identify any other statute that might provide it with independent authority to provide for home-to-work transportation for its on-call employees. Congress has on several occasions enacted authority to relieve the department from another limitation set forth in section 1344(a)(1). *See, e.g.*, Pub. L. No. 109-108, § 202, 119 Stat. 2290, 2314 (Nov. 22, 2005) ("appropriations made available to the Department of Commerce by this Act for salaries and expenses shall be available for hire of passenger motor vehicles as authorized by 31 U.S.C. 1343 and 1344[(a)(1)]").

NLSC's final argument is that it and its employees accept the general rule, as applied to each employee's normal, daily commute. However, they do not agree that it should be applied to employees who have already performed their normal obligation to get to and from work, and who are voluntarily performing on-call duties in addition to their normal duties, outside of the agency's normal workdays and work times. Hart Memorandum, at 2. As discussed above, the statute makes no such distinction. In the past, we have rejected similar appeals for exceptions to the general rule.

For example, in B-171969.42, Jan. 9, 1976, we considered a claim for home-to-work mileage costs for voluntary overtime performed on Saturdays and Sundays. Applying the general rule, we observed that the general rule must be applied even if regular work is scheduled at irregular hours. In another case, 36 Comp. Gen. 171 (1956), we considered whether United States marshals who were required to return to headquarters after hours were entitled to reimbursements for home-to-work mileage. Again, we applied the general rule, even though the employee's home-to-work expenses were increased by emergency conditions and the performance of necessary overtime, without regard for the fact that the employees resided outside their headquarters cities, and the fact that "call-back overtime duty" was being performed. *Id.* at 172.

The fact that emergency conditions may necessitate additional trips or otherwise increase commuting costs does not alter the employee's responsibility to provide for his or her own home-to-work transportation. 60 Comp. Gen. 420 (1981). As put

plainly in B-190071, May 1, 1978, "We are unable to agree . . . that [home-to-work] transportation expenses . . . for callback overtime duty should be at Government expense."

CONCLUSION

Given the prohibition in 31 U.S.C. § 1344(a)(1), NOAA and NLSC may not use appropriated funds to reimburse NLSC employees for the mileage between their residences and the NLSC warehouse for after-hours, on-call, emergency services on behalf of the government. If NOAA wishes to allow NLSC to use appropriated funds for these purposes, NOAA should approach Congress and seek appropriate changes to the law.

A handwritten signature in black ink, appearing to read "Gary L. Kepplinger", with a long horizontal flourish extending to the right.

Gary L. Kepplinger
General Counsel