



GAO

Accountability * Integrity * Reliability

Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: National Transportation Safety Board—Insurance for Employees
Traveling on Official Business

File: B-309715

Date: September 25, 2007

DIGEST

The National Transportation Safety Board (NTSB) improperly used its appropriated funds to purchase accident insurance for its employees on official travel. NTSB does not have an appropriation specifically available for such a purpose, and the expenditures cannot be justified as a necessary expense. Because NTSB has no appropriation available to purchase accident insurance, the payments NTSB made constitute violations of the Antideficiency Act. NTSB must report the violations to the President and Congress, with a copy of the report to the Comptroller General.

DECISION

The National Transportation Safety Board (NTSB) has requested a decision under 31 U.S.C. § 3529 regarding whether NTSB properly used its appropriated funds to purchase accidental death and dismemberment insurance for its employees traveling on official business and, if not, whether such payments constituted violations of the Antideficiency Act, 31 U.S.C. § 1341. Letter from Steven E. Goldberg, Chief Financial Officer, NTSB, to David M. Walker, Comptroller General of the United States, *Re: Request for Advisory Opinion Under 31 U.S.C. § 3529 Concerning Payment of Insurance Coverage for NTSB Employees*, June 19, 2007 (Goldberg Letter). We conclude that NTSB's appropriation was not available to purchase such insurance and that NTSB's payments for the insurance violated the Antideficiency Act.

Our practice when rendering decisions is to obtain the views of the relevant federal agencies. GAO, *Procedures and Practices for Legal Decisions and Opinions*, GAO-06-1064SP (Washington, D.C.: Sept. 2006), available at www.gao.gov/legal.htm. In this regard, NTSB provided us a legal memorandum detailing its views in this matter. Memorandum from Linda L. Lewis, Assistant General Counsel, NTSB, to Joseph G. Osterman, Managing Director (MD-1), NTSB, *Insurance Coverage for NTSB Employees*, May 25, 2007 (Lewis Memo), submitted with Goldberg Letter.

BACKGROUND

NTSB employees fly in official travel status on various types of commercial and government aircraft, both as ticketed and non-ticketed passengers, to transportation accident sites around the world. Goldberg Letter, at 1. In the aftermath of a 1996 crash of an Air Force airplane in Croatia, NTSB employees raised concerns about the extent of their insurance coverage when flying to accident scenes on official travel. *Id.* The employees were concerned that travel insurance incidental to the government travel card contract did not cover non-ticketed travel, that there was no Federal Tort Claims Act¹ right of recovery for an accident involving a United States government aircraft, and that there was likely no way to recover losses resulting from accidents involving foreign state aircraft. *Id.* at 2.

To allay these concerns, NTSB purchased an accidental death and dismemberment insurance policy in 1998 for its employees who travel on official business and renewed it regularly until 2006.² *Id.* at 1. NTSB paid the policy from its “Salaries and Expenses” appropriation, which is available for “necessary expenses of the National Transportation Safety Board.” *E.g.*, Transportation, Treasury, Housing and Urban Development, the Judiciary, the District of Columbia, and Independent Agencies Appropriations Act, 2006, Pub. L. No. 109-115, div. A, title VI, 119 Stat. 2396, 2487 (Nov. 30, 2005). The policy provided insurance to all NTSB employees traveling domestically or internationally on official business, in any kind of vehicle, whether commercial or government owned. Goldberg Letter, at 2.

In September 2006, NTSB extended the policy until September 2007; however, on the advice of counsel, NTSB did not pay the invoice for that year and canceled the policy retroactively to September 1, 2006. *Id.* NTSB counsel advised that NTSB’s

¹ The Federal Tort Claims Act allows waiver of the federal government’s sovereign immunity in cases where federal employees are negligent while acting within the scope of their employment. 28 U.S.C. § 1346(b).

² NTSB renewed the policy on a yearly basis until July 2002, when it renewed the policy for 3 years. E-mail from Linda L. Lewis, Assistant General Counsel, NTSB, to Wesley Dunn, Senior Staff Attorney, GAO, *Subject: NTSB Insurance Opinion*, Aug. 24, 2007; Letter from Laura A. Cincotta, Assistant Vice President, Marsh USA Inc., to Donald P. Libera, Jr., Deputy Chief Financial Officer, NTSB, *Subject: Group Business Travel Accident Insurance Life Insurance Company of North America Policy #ABL 665772*, Sept. 9, 2002. NTSB renewed the policy for another year in 2005. See Letter from Laura A. Cincotta, Senior Associate, Mercer Health and Benefits, to Ms. Colette M. Magwood, Assistant Human Resource Director, NTSB, *Subject: Group Business Travel Accident Insurance Life Insurance Company of North America Policy #ABL 665772*, June 30, 2006. NTSB spent a total of \$74,063 on the policy. E-mail from Stephen Goldberg, Chief Financial Officer, NTSB, to Linda Lewis, Assistant General Counsel, NTSB, *Subject: FW: Flight Insurance Premiums*, Aug. 27, 2007.

appropriation was not available to purchase accident insurance for NTSB employees. Lewis Memo, at 9–10. Counsel concluded that accident insurance is a personal expense to be borne by the employee, not the government, and that accident insurance has no particular nexus with NTSB’s mission. *Id.* At counsel’s suggestion, NTSB asks us whether it properly used its appropriation to purchase accident insurance for its employees, and if not, whether it violated the Antideficiency Act.

DISCUSSION

Appropriated funds are available only for the objects for which they were made unless otherwise provided by law. 31 U.S.C. § 1301(a). However, each item of expenditure need not be specified in an appropriations act. B-306748, July 6, 2006. Under the necessary expense rule, appropriations are available for expenses which are necessary or incident to the proper execution or achievement of the object of the appropriation. *Id.* The necessary expense rule recognizes that when Congress makes an appropriation for a particular purpose, by implication it authorizes the agency involved to incur expenses which are necessary or incident to the accomplishment of that purpose. *Id.*

As a general matter, accident insurance while in official travel status is a personal expense to be borne by the employee. 47 Comp. Gen. 319 (1967); B-128981, Sept. 20, 1956 (appropriated funds not available to purchase “flight insurance” for employees traveling on official business). *See also* B-208630, Mar. 22, 1983 (appropriated funds not available to purchase personal collision insurance for employee who rents automobile); 41 C.F.R. § 301-10.452 (when renting an automobile on official business accident insurance “is a personal expense”). Of course, when an agency has statutory authority to provide insurance to its employees, it may do so. For example, agencies are required to pay from their appropriations an amount equal to one half the amount an employee elects to withhold from his or her pay as a contribution to a group life insurance plan purchased by the Office of Personnel Management, such as the Federal Employees Group Life Insurance (FEGLI) program. 5 U.S.C. § 8708. *See* B-143693, Aug. 25, 1960 (“Any extensions of such [agency] contributions . . . or increase in the field of coverage would . . . be appropriate matters for legislation.”). NTSB has not identified, and we are not aware of, any statutory authority permitting it to purchase accident insurance for its employees.

We have not objected to the use of appropriated funds to cover what would otherwise be personal expenses where the benefit accruing to the government outweighs the personal nature of the expense. *E.g.*, B-288266, Jan. 27, 2003. That is not the case here, however. In this regard, NTSB is “charged by Congress with investigating every civil aviation accident in the United States and significant accidents in the other modes of transportation.” NTSB, *History and Mission*, available at www.nts.gov/Abt_NTSB/history.htm (last visited Aug. 27, 2007). NTSB also investigates “aviation accidents overseas involving U.S.-registered aircraft, or involving aircraft or major components of U.S. manufacture.” *Id.* To fulfill this mission, NTSB employees “travel throughout the country and to every corner of the

world to investigate significant accidents.” *Id.* Prior to the purchase of the insurance policy in 1998, and since its cancellation in 2006, NTSB employees have carried out this responsibility without the benefit of accident insurance supplied by NTSB, belying any notion that accident insurance is necessary to the success of NTSB’s mission. More importantly, as NTSB counsel recognizes, “there is already a general requirement for Federal employees to perform their jobs in accordance with their agency’s statutory mandates and governing regulations. No further inducement is necessary or justified. . . . [Purchasing accident insurance for NTSB employees in official travel status] does not bear a logical relationship to NTSB’s general appropriation.” Lewis Memo, at 9–10. We agree. Accident insurance is not necessary for the successful execution of the object of NTSB’s appropriation, and thus NTSB improperly used its appropriated funds to purchase accident insurance for its employees.

In one case, we concluded that the General Services Administration could accept accident insurance coverage for federal employees when the insurance was merely incidental to a statutorily authorized travel agent contract or a contract for travel cards. B-222234, Dec. 9, 1986. In that case, the incidental benefit did not cost the government extra money, the government could not negotiate the insurance term out of the contract, and the government received no financial incentive if it declined the insurance. *Id.* As NTSB counsel points out, NTSB has purchased its accident insurance policy for the sole purpose of providing coverage to its employees, not as an incidental part of a broader contract. Lewis Memo, at 11.

When an agency’s appropriation is not available for a certain purpose, and the agency has no other funds available for that purpose, any payments the agency makes or obligations it incurs for that purpose violate the Antideficiency Act, 31 U.S.C. § 1341(a).³ B-302710, May 19, 2004; B-229732, Dec. 22, 1988. As discussed above, NTSB has no funds available to purchase accident insurance for its employees in official travel status. Thus, payments NTSB made for the insurance constitute violations of the Antideficiency Act. B-302710. NTSB counsel agrees. Lewis Memo, at 14 (“In the absence of an appropriation, executive officers and employees may not draw funds from the Treasury to effectuate an otherwise unauthorized purpose. If an agency does so, it has violated the Antideficiency Act.”). NTSB must report such violations to Congress and the President, with a copy of the report to the Comptroller General. 31 U.S.C. § 1351.

CONCLUSION

NTSB improperly used its appropriated funds to purchase accident insurance for its employees on official travel. NTSB does not have an appropriation specifically

³ Section 1341(a) provides in part, “An officer or employee of the United States government . . . may not make or authorize an expenditure or obligation exceeding an amount available in an appropriation.”

available for such a purpose, and the purchase cannot be justified as a necessary expense. Because NTSB has no appropriation available to purchase accident insurance, the payments NTSB made constitute violations of the Antideficiency Act. NTSB must report the violation to the President and Congress, with a copy to the Comptroller General.

A handwritten signature in black ink, appearing to read "Gary L. Kepplinger". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Gary L. Kepplinger
General Counsel