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Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Harry D. Bickford

File: B-257317

Date: June 12, 1995

DIGEST

An employee became ill while on temporary duty and was hospitalized. The employee's wife traveled to the temporary duty location, occupied his unused hotel room on the day following the day he was hospitalized, took possession of his luggage and the government equipment and files he had with him, and remained there until he was discharged from the hospital. She also made local calls to his supervisor and to cancel his appointments. The employee claimed lodging costs for the entire period the hotel room was used, including the time it was occupied by his wife, and the telephone use charges. Under 41 C.F.R. § 301-12.5 (1994), an employee may continue to receive per diem for the period of his illness while on temporary duty away from his official station. The employee is entitled to his hospital lodging expenses and meals, as well as the cost of his hotel room for the day after he was hospitalized prior to occupancy by his wife. The telephone use charges are allowable since the calls were for official business. However, the cost of the hotel room for the period occupied by his wife may not be allowed. James A. Sisler, B-220540, Mar. 31, 1986.

DECISION

This decision is in response to a request from an authorized certifying officer, National Mediation Board.[1] The question asked is whether an employee performing temporary duty may be reimbursed for lodging and other expenses, including those incurred by his wife, at his temporary duty location during the period he was hospitalized at that location. We conclude that the employee may be reimbursed for his own lodging and meal expenses, but not for his wife's lodging, for the following reasons.

Mr. Harry D. Bickford, an employee of the National Mediation Board stationed in Jacksonville, Florida, was performing temporary duty in Miami, Florida. While

[1]Mr. William A. Gill, Jr.

there, he became ill and was admitted to the intensive care unit of a local hospital on the evening of March 15, 1994. He remained there until the morning of March 25, 1994.

During his hospital stay, his hotel room, which contained his unattended government confidential files, computer and printer, and personal possessions, continued to accrue daily charges to Mr. Bickford since it remained unoccupied and was not canceled. However, we understand that Mrs. Bickford, who was not a federal employee, traveled to Miami on March 17, 1994, occupied the room during the remaining period of his illness, and took possession of Mr. Bickford's luggage as well as the government files and equipment. She also made telephone calls from the room to apprise Mr. Bickford's supervisor of his medical status and to cancel his upcoming appointments. On March 25, 1994, Mr. Bickford was discharged from the hospital and he and his wife returned to their residence in St. Augustine, Florida, where he remained on sick leave for the remainder of March 1994.

Mr. Bickford filed a travel voucher on April 4, 1994, claiming round-trip mileage for himself, hotel room charges and meals for the period March 14 through 24, 1994, as well as the telephone use charges imposed by the hotel.

The agency disallowed the hotel room cost of $495 for the period of March 16 through 24 when he was in the hospital and the $18 telephone use charge imposed by the hotel. However, the agency submitted the matter here for review because Mrs. Bickford made the telephone calls for official purposes and took possession of the agency equipment and files in the hotel room. The agency points out that her taking possession of the equipment obviated the need to send another employee to Miami to do it. If neither an agency employee nor Mrs. Bickford had been able to travel there for several days, the agency would have made arrangements to place the equipment and Mr. Bickford's possessions in storage and cancel his room.

Under the provisions of 5 U.S.C. § 5702(b)(1)(A) (1994), and section 301-12.5(a) and (b) of the Federal Travel Regulation (FTR),[2] a federal employee who becomes incapacitated due to illness while in a travel status is entitled to a continuation of per diem allowances while away from his official duty station, but normally not to exceed 14 days, and to transportation and travel per diem for himself for his return travel to his official station.

Based on FTR § 301-12.5(a), we have held that an employee who becomes ill while performing temporary duty and is hospitalized may be reimbursed for subsistence expenses (room and board) while in the hospital; however, the employee is not entitled to be reimbursed for his wife's lodging or other expenses she incurred since

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[2]41 C.F.R. § 301-12.5(a) and (b) (1994).

these expenses are personal to her, and not incident to official travel.[3] In the present case, Mrs. Bickford occupied Mr. Bickford's room beginning on March 17, 1994. Therefore, her lodging costs there from March 17 until March 24 may not be allowed.

There is one additional lodging cost to be considered. After Mr. Bickford entered the hospital on March 15, hotel room charges continued for another day (March 16), prior to his wife's arrival on the 17th. He has not been reimbursed for the in-between day's lodging cost. In another setting, when an employee on temporary duty had no choice but to incur dual lodging expenses, we allowed reimbursement of both lodging costs. Milton J. Olsen, 60 Comp. Gen. 630 (1981).[4] Accordingly, since Mr. Bickford actually incurred a cost for the hotel room on the 16th incident to official travel, we believe that it is reimbursable to him as necessarily incurred in the conduct of official business.

With regard to the telephone use charges, they were imposed by the hotel for use of its equipment when Mrs. Bickford made local telephone calls on Mr. Bickford's behalf to his supervisor and to cancel his appointments in the Miami area. Had Mr. Bickford's illness not required hospitalization, but simply prevented him from performing his duties in the area, he would have made these calls and incurred the expense involved. The fact that Mrs. Bickford made these calls instead did not change the character of the calls and the charges incurred, i.e., official necessity. Therefore, the telephone use charges for these local calls may be reimbursed as well.

for Robert P. Murphy
General Counsel

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[3]James A. Sisler, B-220540, Mar. 31, 1986, and decisions cited.

[4]Cf. Paul G. Thibault, 69 Comp. Gen. 72 (1989).

Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Clyde Huyck—Entitlement to Tour Renewal Agreement Travel—EEOC Order

File: B-259632

Date: June 12, 1995

DIGEST

A Department of Defense employee assigned to a post in Cuba was terminated from employment and returned to the United States after 1 year's service. He filed a complaint with the Equal Employment Opportunity Commission (EEOC) which issued an order directing his reinstatement and granting all benefits as if he had not been terminated during the 3-year interim period. The agency interpreted the EEOC order as not requiring payment for tour renewal agreement travel that the employee would have been eligible for if he had remained in Cuba rather than being returned to the United States, nor to allow transfer of entitlement to such travel to a subsequent tour of duty in England for which such travel is otherwise available upon completion of 2 years of service. GAO finds the agency's interpretation justified since after his return to the United States the employee did not have any reason to perform travel between Cuba and the U.S. for which he must be made whole under the EEOC order, and in any event regulations do not permit transferring entitlement of such travel to a different post of duty. GAO will not challenge an EEOC interpretation of its own order should EEOC reach a different conclusion.

DECISION

This is in response to a request for an advance decision whether Mr. Clyde Huyck is entitled to reimbursement for travel from his post of duty in England to the United States and return in June 1994 as a result of an Order of the Equal Employment Opportunity Commission (EEOC) reinstating Mr. Huyck as an employee of the Department of Defense Dependents Schools (DoDDS).[1] We conclude that the

[1]The matter was submitted by DoDDS through, and assigned control number 94-03 by, the Department of Defense Per Diem, Travel and Transportation Allowance Committee.

agency's interpretation of the EEOC order as not requiring such reimbursement is justified.

Mr. Huyck was initially employed by DoDDS as a teacher in Guantanamo Bay, Cuba, in September 1989 but his employment was terminated effective June 14, 1990, during his trial period, and he was returned to his home of record in the United States at government expense. Mr. Huyck filed a complaint with the EEOC, challenging his termination. After a hearing, the EEOC recommended that Mr. Huyck be reinstated as a teacher with backpay and receive "all other benefits, including step increases, as if he had never been terminated." DoDDS adopted this recommendation, and reinstated Mr. Huyck effective August 1993, with all personnel actions, including within grade increases and differential pay determinations, processed as if Mr. Huyck had been in Cuba during the intervening period. However, he was not returned to a position in Cuba, but was reassigned to a position in England in September 1993.

The agency states that the tours of duty in England are 2 years, and therefore Mr. Huyck would not be eligible for tour renewal agreement travel under 5 U.S.C. § 5728(a) on the basis of his assignment to England until he completed his first tour there in September 1995. As to his prior assignment in Cuba, they note that he actually was returned to the United States at government expense at the end of his year's tour in Cuba when his employment was terminated in 1990, and he remained in the United States until his reassignment to England in 1993.

Mr. Huyck, however, argues that since the tours of duty in Cuba are only 1 year, based on the EEOC order he should be credited for the cost of tour renewal agreement travel between Cuba and the United States each year from 1991 through 1993 as if he had not been terminated. Mr. Huyck returned from England to the United States with his family in June 1994 for a visit, and he believes that the credit he claims for the Cuba tour renewal agreement travel should be applied to cover the cost of the 1994 travel from England. DoDDS has declined to reimburse the cost of that travel, and referred the matter here for our decision.[2]

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[2]In view of the authority granted the EEOC by statute, we do not render decisions on the merits of, or conduct investigation into, allegations of discrimination in employment in other agencies, nor do we render decisions on the propriety of final orders of the EEOC. See Albert D. Parker, 64 Comp. Gen. 349, 351 (1985); and Owen F. Beeder, 69 Comp. Gen. 134 (1989). In response to an authorized agency official's request, however, pursuant to 31 U.S.C. § 3529, we may provide a decision on the payment required to be made to comply with an EEOC order. See eg. Lujuana Butts, 63 Comp. Gen. 20 (1983).

The purpose of an EEOC remedial order is to make the injured party whole. See EEOC regulations, 29 C.F.R. § 1613.271(a)(4); and Appendix A to 29 C.F.R. Part 1613 (1994). This does not include simply providing a windfall. See e.g. Maksymchuk v. Frank, 987 F.2d 1072 (4th Cir. 1993).

The purpose of tour renewal agreement travel under 5 U.S.C. § 5728(a) is to allow an employee who is stationed outside of the continental United States to return to the United States between tours of duty overseas. 53 Comp. Gen. 468 (1974). An employee stationed in the United States (other than in Alaska and Hawaii) is not eligible for tour renewal agreement travel. B-176933, Oct. 18, 1972.

If the purpose of the tour renewal agreement travel is to provide employees with a trip home to the United States during a break between tours of duty at overseas posts, its purpose is not met if not used by the employee at or close to the time of the actual break between successive tours of duty. Therefore, under the agency's regulations, as a general rule, it must be used at the time and from the location at which eligibility for it is earned, and may not be held over for use at a later date or from a different overseas location. Volume 2, Joint Travel Regulations, para. C4157. Thus, in our view, the tour renewal agreement travel the employee might have earned had he remained employed in Cuba would have been limited for his use between Cuba and the U.S., and is not a benefit that may be "put in the bank" and used at a later time from a different post. Nor may it be translated into a dollar equivalent and claimed as such, in lieu of having performed the travel.

Mr. Huyck was in fact returned to the United States in the summer of 1990 where he apparently remained until being assigned to England in 1993. While the EEOC order provided that he was to be reinstated with all benefits as if he had never been terminated, it does not specifically address tour renewal agreement travel. Since Mr. Huyck was in the United States during the 1990-1993 period, and he did not perform nor incur the costs of travel between Cuba and the United States during that period, there is no underlying reason for him to be paid for it as a matter of making him whole. A different conclusion might be required had Mr. Huyck, for example, remained in Cuba in some other capacity during the 1990-1993 period and performed vacation travel at his own expense between Cuba and his home of record in the United States. If that were the case he might well have a valid argument that he should be reimbursed for such travel since had his employment not been wrongfully terminated, the agency would have provided similar travel at government expense. As noted, however, that is not the case. Also, as explained above, we believe the agency acted appropriately in declining to transfer the entitlement to his subsequent tour of duty in England, for which such travel is available independently on the basis of the tour of duty in England, but only after 2 years of service there.

Accordingly, we believe in these circumstances that the agency is justified in disallowing Mr. Huyck's claim for tour renewal agreement travel pursuant to the EEOC order. We add, however, that should the matter again be brought before the EEOC for interpretation and should the EEOC interpret its order to reach a contrary conclusion, we would not question a payment made in accordance with the EEOC's determination. See Owen F. Beeder, 69 Comp. Gen. 134 (1989).

Seymour Efros

Robert P. Murphy
General Counsel

Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Paul D. Bills, et al. —GAO Jurisdiction—Matters Subject to a Negotiated Grievance Procedure

File: B-260475

Date: June 13, 1995

DIGEST

Former members of a collective bargaining unit who had been employed under intermittent appointments claim backpay and other benefits on the ground that they should have been appointed as regular full-time employees. Although a negotiated grievance procedure was available to them at the time the claims arose under which other similarly situated employees grieved their employment status and received a settlement from the agency, these employees did not do so. Subsequently, after leaving the bargaining unit, the employees sought resolution of their claims in the General Accounting Office (GAO) asserting that the grievance procedure is no longer available to them. GAO has no jurisdiction over claims by employees covered by a negotiated collective bargaining agreement containing grievance procedures. The negotiated grievance procedures in this case represented the employees' exclusive remedy at the time the claims arose, and the fact that the claimants did not avail themselves of this remedy when it was available does not provide a basis for GAO to take jurisdiction of their claims.

DECISION

Mr. Paul Bills on behalf of himself and eight other members of American Federation of Government Employees (AFGE) Local 1138, seeks reconsideration of our Claims Group's declination of jurisdiction over their claims.[1] Their claims are for backpay for holidays, annual and sick leave and other benefits to which they would have been entitled if they had received appointments as regular full-time employees for several periods of time when they served as intermittent employees. We affirm the Claims Group's determination.

[1]Claims Group's letter Z-2869283, July 12, 1994, to Senator Howard M. Metzenbaum, who had inquired on the claimants' behalf.

PUBLISHED DECISION 740615
74 Comp. Gen.____

The claimants here served as intermittent employees in the Civil Engineering Group at Wright-Patterson Air Force Base, Dayton, Ohio, under appointments made at various times beginning in the 1970s with the last extending into January 1990. Their names and the last day on which they served under their intermittent appointments are shown below:

Name	Last Day of Intermittent Appointment
Paul Bills	October 1, 1988
Larry G. Lykins	July 1, 1987
Ted E. Beegle	October 30, 1987
Thomas J. Bachman	September 26, 1986
Ronald L. Coburn	January 22, 1989
Joseph D. Geiger	January 6, 1990
Gary C. Smith	August 7, 1977
Ben A. Rice	March 4, 1989
Kevin L. Jones	September 20, 1986

At the times when they served as intermittent employees, these individuals were covered by a collective bargaining agreement with the agency and were represented by the International Association of Machinists and Aerospace Workers (IAM & AW) Local 2333. There is no dispute that the employees could have challenged their employment status under the grievance procedures of that collective bargaining agreement. However, they did not do so during their tenure as intermittent employees. Subsequently, the employees received regular permanent appointments to positions represented by a different labor organization, the AFGE. On March 31, 1993, these employees submitted grievances to the agency seeking to have their prior intermittent appointments retroactively changed to regular full-time appointments with entitlement to backpay, leave, and other benefits. In submitting their grievances, the employees named AFGE Local 1138 as their authorized agent.

In an April 13, 1993, memorandum, the agency denied the grievances on two grounds: (1) the AFGE could not represent them on the matter because, at the time their claims arose, the IAM & AW was the employees' exclusive representative, and (2) under the agreement with the IAM & AW, any grievance they had terminated when they left the bargaining unit, and therefore their grievance was untimely filed.

The agency also noted that in October 1992, the IAM & AW on behalf of other similarly situated intermittent employees, had filed a group grievance raising the same issues, and the agency entered into a negotiated settlement with the IAM & AW in March 1993 resulting in a number of concessions to the employees included in the group grievance. By its terms, this settlement applied only to the 55 employees who joined the group grievance. Although not required to, the agency agreed to honor the claims of any present and former temporary intermittent employees who chose to join in the settlement. The nine claimants here did not join in the grievance and thus were not covered by the settlement.

Subsequently, when the agency denied the grievances of Mr. Bills and the other eight employees, Mr. Bills appealed to our Claims Group, which as we noted, declined to consider the claims because the General Accounting Office's jurisdiction does not cover claims that are subject to a negotiated grievance procedure. In his request for reconsideration, Mr. Bills asserts that, because the agency has stated that he and the other employees no longer have the right to grieve their former status as intermittent workers, their claims are not subject to the jurisdictional bar cited by the Claims Group.

OPINION

As the Claims Group noted, we do not have jurisdiction to settle claims of members of a collective bargaining unit on a matter that is not specifically excluded in the collective bargaining agreement. Cecil E. Riggs, et al., 71 Comp. Gen. 374 (1992); and 4 C.F.R. § 30.1(b). The rationale for this limitation on our jurisdiction is contained in a line of court cases holding that the exclusivity provision in the Civil Service Reform Act of 1978, 5 U.S.C. § 7121(a), makes the negotiated grievance procedure under the collective bargaining agreement the exclusive remedy for claims that are subject to that procedure. See Carter v. Gibbs, 909 F.2d 1452 (Fed. Cir. 1990), cert. denied, 111 S. Ct. 46 (1990).

Neither our Riggs decision nor our subsequent cases have considered claims by employees who were members of a collective bargaining unit covered by a negotiated grievance procedure at the time the claims arose, but who no longer were members of that bargaining unit at the time they asserted the claims, as is the case here. However, the courts have considered this issue and have determined that it is the employee's status as a member of the bargaining unit at the time the claim arose that is dispositive of the issue; that is, if the employee was a member of a bargaining unit covered by such an agreement, the Civil Service Reform Act's exclusivity provision is applicable to the claim. Muniz v. United States, 972 F.2d 1304 (Fed. Cir. 1992); and Aamodt v. United States, 22 Cl. Ct. 716 (1991), affirmed 976 F.2d 691 (Fed. Cir. 1992). This holding has been applied even where the employees have left the bargaining unit and may no longer bring their

grievances under the collective bargaining agreement. Brammer v. United States, 24 Cl. Ct. 487, 494 (1991).

In the present case, under the facts presented to us, and applying the decisions cited above, where the negotiated grievance procedure was available to the nine employees when their claims arose (during their tenure as intermittent employees) that grievance procedure was their exclusive remedy. The facts that they may have failed to take advantage of that procedure when it was available, and the grievance procedure may no longer be available to them to pursue these claims, would not create jurisdiction in our Office to consider such claims over which we had no jurisdiction when they arose.[2] Riggs, supra. Accordingly, we have no jurisdiction to settle these claims.[3]

for Seymour Efros
Robert P. Murphy
General Counsel

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[2]We note that at least in some circumstances courts have held that termination of an employee's status under a collective bargaining agreement would not exclude a dispute that arose while the employee was covered under the agreement from the grievance and arbitration process although the employee was no longer covered under the agreement. See, Muniz v. United States, 972 F.2d 1304 (Fed. Cir. 1992); and Albright v. United States, 26 Cl. Ct. 1119 (1992). It is not within our province to review the agency's decision to deny the employees' grievances; that would be a matter for the employees to pursue via arbitration and appeal procedures provided under the Civil Service Reform Act, 5 U.S.C. §§ 7121, 7122.

[3]We also note that even if the claims fell within our jurisdiction, many would be at least partially time barred by our 6-year statute of limitations under which the claim must have been received by our Office or by the department or agency out of whose activities the claim arose within 6 years from the date the claim accrued. 31 U.S.C. § 3702(b), as implemented by 4 C.F.R. § 31.5(a). Since these claims were originally submitted as grievances to the agency on March 31, 1993, to the extent any amounts claimed accrued before March 31, 1987, they would be time barred.

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