

September 6, 2002

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
)	Docket Nos. 50-390-CivP; 50-327-CivP
TENNESSEE VALLEY AUTHORITY)	50-328-CivP; 50-259-CivP
(Watts Bar Nuclear Plant, Unit 1)	50-260-CivP; 50-296-CivP
Sequoyah Nuclear Plant, Units 1 & 2)	
Browns Ferry Nuclear Plant, Units 1,2 &3))	
)	ASLBP No. 01-791-01-CivP
)	
)	EA 99-234

NRC STAFF RESPONSE TO
TENNESSEE VALLEY AUTHORITY'S MOTION TO COMPEL

The Nuclear Regulatory Commission (NRC) Staff hereby responds to the Tennessee Valley Authority's (TVA) motion to compel the Staff to pay additional witness fees and costs to Wilson C. McArthur. The NRC Staff requests that the Atomic Safety and Licensing Board (Board) deny TVA's motion to compel the Staff to pay additional costs to McArthur.

BACKGROUND

On April 9, 2002, the NRC Staff mailed a subpoena to McArthur compelling his testimony in this matter beginning on May 2, 2002 in Chattanooga, Tennessee. The Staff scheduled McArthur's testimony on that date based on representations from TVA counsel Brent Marquand that McArthur and his wife would be driving from Provo, Utah to Florida for personal business and would be passing through the Chattanooga area in the beginning of May. As a result of this representation, the Staff did not arrange for air transportation for McArthur to Chattanooga. Instead, the Staff planned to reimburse McArthur for his mileage pursuant to the subpoena.

McArthur and his wife did not drive to Chattanooga, but cashed in frequent flyer miles on United Airlines for a flight from Salt Lake City, Utah to Atlanta, Georgia. McArthur then traveled by rental car from Atlanta to Chattanooga prior to the scheduled start of his testimony. After the

completion of his testimony, McArthur traveled on personal business, returning to Salt Lake City on May 11, 2002. Upon his return to Utah, McArthur mailed his travel information, including his ticket receipt from United Airlines, his hotel receipt, and his rental car receipt to Marquand for reimbursement. Marquand then forwarded this information to Staff counsel for reimbursement of McArthur pursuant to the subpoena. McArthur's information was submitted to the NRC Travel Management Branch, which approved the amount of \$651.44 for reimbursement.

DISCUSSION

The Board should deny TVA's motion to compel the Staff to pay additional fees and costs for McArthur. At the outset, the Board should dismiss the motion to compel because the Board lacks jurisdiction over disputes under the Federal Travel Regulations. Second, the Board should dismiss the motion because TVA lacks standing to raise a claim on behalf of McArthur and has asserted no interest of its own that could be redressed by a Board decision. If the Board does not dismiss the motion, it should deny the motion because the Staff has reimbursed McArthur for all allowable expenses under the Federal Travel Regulations, NRC regulations, and federal statute.

A. The Board lacks jurisdiction over disputes under the Federal Travel Regulations.

The NRC Travel Management Branch looks to the Federal Travel Regulations in making determinations of allowable claims and expenses. Those regulations set forth a specific method for challenging an agency's disallowance of reimbursement for a particular claim. Under 41 C.F.R. § 301-52.11, an individual challenging a disallowed claim must file a new claim with the agency, including full itemization and receipts for all disclaimed items, provide a copy of the notice of disallowance, and state the proper authority for the claim if challenging the agency's application of law or statute. If the agency disallows the claim after reconsideration, the individual may then submit the claim for adjudication to the Government Services Agency Board of Contract Appeals (GSA BCA). The Licensing Board is not the appropriate forum to decide whether the NRC Travel Management Branch has acted within its discretion under the Federal Travel Regulations. If

McArthur would like to seek additional reimbursement for his testimony, he may bring a challenge to the NRC first, then submit the claim to the BCA if the agency continues to reject his claim. The Board should therefore dismiss TVA's motion to compel for lack of jurisdiction.

B. TVA lacks standing to request further reimbursement of McArthur's expenses.

TVA has no standing to raise the issue of payment to McArthur in a motion to compel. Standing is an essential element in determining whether there is a legitimate role for the Board in dealing with a particular grievance. *Westinghouse Electric Corp. (Nuclear Fuel Export License for Czech Republic - Temelin Nuclear Power Plants)*, CLI-94-7, 39 NRC 322, 331-32 (1994). Although agencies are not constrained by Article III concepts of standing, the Commission has generally applied those judicial concepts of standing in NRC proceedings. *See Envirocare of Utah, Inc. v. NRC*, 194 F.3d 72, 74 (D.C.Cir. 1999) and *Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1)*, CLI-83-25, 18 NRC 327, 332 (1983). In order to establish standing, TVA must demonstrate that: 1) it has suffered an injury-in-fact that is arguably within the zone of interests protected by the governing statute; 2) the injury can be traced to the challenged action; and 3) the injury is likely to be redressed by a favorable decision. *Id.*, and *Atlas Corp. (Moab, Utah Facility)*, LBP-97-9, 45 NRC 414, 423 (1997).

TVA has not established in its motion to compel that it has standing to challenge a reimbursement decision made by the NRC travel office regarding a private citizen. Although McArthur is a former TVA employee, he has retired and is now a private citizen. As such, TVA counsel cannot represent him or his interests in this proceeding. Even if TVA was permitted to represent McArthur, it has not demonstrated that McArthur has requested any such representation. TVA cannot unilaterally choose to represent the interests of a private individual. If McArthur believes that he is entitled to further reimbursement, his recourse is through direct contact with the Staff and the Travel Management Branch, not through the litigation of TVA's violation of NRC regulations.

TVA has not demonstrated that it has an individual interest in any further reimbursement of McArthur. TVA has not suffered an injury-in-fact that is within the zone of interests of the relevant statute and regulation. First, TVA has not suffered an injury-in-fact as a result of the NRC's decision regarding McArthur's reimbursement. TVA did not subpoena McArthur as a witness, and as such is not liable to reimburse him for his travel expenses. TVA instead chose to rely upon the NRC Staff's subpoena of McArthur and therefore is not bound to pay any additional costs not reimbursed by the NRC. Any reimbursement of McArthur by TVA would be strictly voluntary and not caused by the NRC's reimbursement decision. The Board should dismiss TVA's motion for this complete failure to demonstrate an interest in the reimbursement decision.

Even if TVA could arguable demonstrate an injury-in-fact, such injury does not fall within the zone of interests of either 10 C.F.R. § 2.720(d) (2002) or 28 U.S.C. § 1821(c)(1) (2000). Under 10 C.F.R. § 2.720(d), "[w]itnesses summoned by subpoena shall be paid, by the party at whose instance they appear, the fees and mileage paid to witnesses in the district courts of the United States." The only individual who falls under the zone of interests protected by this regulation is McArthur as the subpoenaed witness. TVA, as a party who did not subpoena McArthur, has no interest protected by this regulation. Similarly, 28 U.S.C. § 1821(c)(1) protects the interests of the witness in reimbursement for travel to and from compelled testimony. That statute in no way provides protection for the party who did not subpoena the witness.

Assuming that TVA could demonstrate an injury-in-fact, that injury is not likely to be redressed by a favorable decision. The redressability element of standing requires a party to show that its claimed actual or threatened injury could be cured by some action of the tribunal. *Sequoyah Fuels Corp.* (Gore, Oklahoma, Site Decommissioning), CLI-01-2, 53 NRC 2, 14 (2001). The NRC Travel Management Branch authorized reimbursement of McArthur for expenses authorized by 28 U.S.C. § 1821 and the Federal Travel Regulations, and disallowed reimbursement for expenses not permitted by those regulations. The NRC is bound by the statute and regulations

and any order by the Board to provide further reimbursement would result in a violation of the law. Under such circumstances, TVA has failed to demonstrate that its alleged injury could be redressed by a favorable Board decision on its motion to compel.

C. The NRC has reimbursed McArthur for all allowable actual expenses.

On May 16, 2002, McArthur sent a letter to Brent Marquand, TVA counsel, detailing his expenditures during his trip to Chattanooga. Attachment A. McArthur included the necessary receipts with this letter, including hotel, rental car, gas, and airfare. Attachments B, C, and D. McArthur's letter clearly indicates that he expected to be reimbursed for his trip by TVA, not by the NRC. However, because the NRC subpoenaed McArthur, Marquand forwarded this information to Staff counsel to arrange for reimbursement. Staff counsel submitted a travel authorization on McArthur's behalf to the Travel Management Branch, seeking approval for the following costs: hotel, rental car, gas, parking, meals and incidental expenses, personal and business calls, transportation to and from home to the airport, and airfare. See Attachment E.

McArthur submitted his passenger receipt from United Airlines, on which he had used personal frequent flyer miles to purchase his ticket. Attachment D. The receipt indicates that McArthur paid \$5.00 for this flight. Initially, the Staff submitted an estimate of the cost of a contract carrier flight from Salt Lake City to Atlanta, and the cost of a flight from Salt Lake City to Chattanooga in order to determine the constructive cost of McArthur's flight. See Attachment E. However, because McArthur's actual out-of-pocket expense for the flight amounted to only \$5.00, the Travel Management Branch was unable to authorize payment of the constructive cost of the flight.

The NRC is prohibited by law from providing further reimbursement to McArthur for his flight to Atlanta from Salt Lake City. First, 28 U.S.C. § 1821(c)(1) limits reimbursement to the "actual expenses of travel." McArthur's actual expenses for his flight from Salt Lake City to Atlanta were \$5.00, as noted on the receipt from United Airlines. See Attachment D. The NRC lacks statutory

or regulatory authority to pay McArthur further costs of the flight beyond his actual out-of-pocket expenses.

The Board of Contract Appeals (BCA) and the Comptroller General of the United States have both concluded in a series of cases that the government cannot reimburse individuals for use of personal frequent flyer miles or travel vouchers or coupons for government travel. In *In the Matter of Lawrence Baranski*, 2001 GSBCA LEXIS 252, 2002-1 BCA (CCH) P31, 684 (Oct. 25, 2001), the BCA sustained the Federal Aviation Administration's determination that Baranski could not be reimbursed for a ticket that he had purchased by redeeming a voucher he had received during personal travel. See Attachment F. Specifically, the BCA stated:

It has long been the case that Government travelers who have acquired airline tickets for their TDY by redemption of frequent flyer miles or coupons acquired on personal travel may not be reimbursed for the supposed value of the tickets because of: (1) the subjectivity that would be involved in ascertaining the value of frequent flyer miles or coupons, (2) the problems of control and accountability in allowing reimbursement for frequent flyer miles and coupons, and (3) the lack of guidance in statute and regulation on how to value such items.

Id. at 3 (citations omitted). Additionally, the government cannot reimburse an individual for use of frequent flyer miles or other travel vouchers or coupons because when the individual uses such items, he incurs no out-of-pocket expenses. In *In the Matter of Sabah Issa*, 1998 GSBCA LEXIS 109 at 7, 98-1 BCA (CCH) P29, 678 (Mar. 30, 1998). Attachment G. The government can only reimburse an individual for actual costs; if the individual fails to show that he incurred ascertainable personal expenses for the ticket in question, the claim for reimbursement must be disclaimed. *Matter of: Martha C. Biernaski*, 65 Comp. Gen. 171, 1985 U.S. Comp. Gen. LEXIS 5 at 2,4 (Dec. 31, 1985). Attachment H.

Under this line of cases, the only cost for which McArthur could be reimbursed for his flight is his actual expense in redeeming his frequent flyer miles. The United Airlines ticket receipt submitted by McArthur indicated that the redemption cost him \$5.00. See Attachment D. Since

McArthur was reimbursed for that cost, the NRC has no further obligation to reimburse McArthur for his ticket.

TVA has argued that the Staff failed to make prior arrangements with McArthur to schedule his travel to and from Chattanooga for his testimony. TVA's motion to compel conveniently disregards its own role in this asserted failure. The Staff scheduled McArthur's hearing testimony in the same manner in which it scheduled his deposition testimony: McArthur informed TVA counsel that he would be in or passing through Chattanooga on personal business, and Staff counsel granted TVA's request to schedule McArthur's testimony during that time. Since McArthur, through TVA counsel, indicated he would be involved in personal travel during that time, the Staff made no attempt to contact him to make travel arrangements.

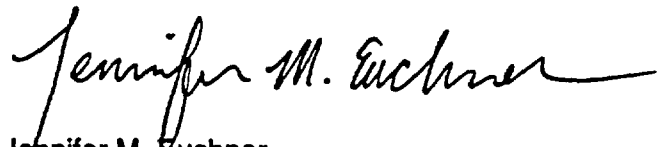
Additionally, TVA counsel represented to Staff counsel that McArthur and his wife would be *driving* from Utah to Florida, and would simply stop in Chattanooga for the length of his testimony. If McArthur had driven, he would have been reimbursed for his mileage pursuant to the subpoena. The Staff cannot reimburse a witness for mileage when the witness has not driven, but instead has used another method of travel, such as flying. If McArthur, either personally or through TVA counsel, had informed the Staff that he intended to fly to Chattanooga, then the Staff could have arranged a contract carrier flight for McArthur. Based on the representations of TVA counsel as to McArthur's travel plans and the Staff's prior experience with McArthur's deposition testimony, the Staff acted reasonably in not arranging for McArthur's travel in advance of his testimony.

Finally, it is disingenuous for TVA to file a motion to compel the Staff to pay additional reimbursement to McArthur. TVA counsel has repeatedly represented that TVA would voluntarily pay any expenses not reimbursed by the Staff in order to ensure that McArthur did not suffer any out-of-pocket expenses. See Attachment I. TVA now seeks to avoid such voluntarily repayment by attempting to make the NRC pay for costs it is not authorized by law to pay.

CONCLUSION

The NRC Staff respectfully requests that the Licensing Board dismiss TVA's motion to compel further reimbursement of McArthur for lack of jurisdiction and for lack of standing. In the alternative, the Board should deny the motion because the NRC reimbursed McArthur for all allowable expenses under the law.

Respectfully submitted,

A handwritten signature in black ink that reads "Jennifer M. Euchner". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Jennifer M. Euchner
Counsel for NRC Staff

Dated at Rockville, Maryland
this 6th day of September, 2002.

ATTACHMENT A

May 16, 2002

Dear Brent,

Enclosed are the expenses
incurred in the recent trip
to Chattanooga, TN. Please
send the expense check to

Wilson C. McArthur
2314 North 390 East
Provo, UTAH 84604

Let me know how the case
goes

Wilson

Telephone # 801 375-9799

Wilson C. McArthur

5/13/02

Purpose: TRAVEL to CHATTANOOGA, TN.
for TVA COURT CASE
from 4/30/02 - 5/4/02

1. TRAVEL

I used a United Airline Mileage plus ticket. I felt it was appropriate to be reimbursed for its value. I called Delta/United to get rates. The average was about \$1000.00 round trip

Options

(A)

Airfare

1000.00

Parking at Airport

64.50

Rent a Car

$11 \sqrt{450} = 40.97 \times 5$

204.85

(B)

If we use mileage 281800

1269.35

$\times 29.6 = 1065.60$

2: Hotel

4/30/02

Stayed with relative

5/1 - 5/8/02

75.00

6.19

3.00

84.19 $\times 3$

252.57

Hotel Parking
5/3 - 5/4 102
9.00 x 3

27.00

5/4 Hotel

77.45

330.02

Telephone

5/1 ~~12.36~~ 20.67

5/2 12.43

5/3 23.86

5/4 3.97

60.93

Food

4/30

Lunch

8.27

Dinner

24.18

5/1

Breakfast (see hotel)

14.44

Lunch

11.60

Dinner

(see hotel)

32.56

5/2

Breakfast

6.98

Lunch

5.60

Dinner

~~(see hotel)~~

24.48

5/3 Breakfast	11.00
Lunch	12.00
Dinner (same hotel)	29.48
	<hr/>
	179.74

~~Total~~

6 AS for rental car when returned to airport	11.87
---	-------

Total	1851.91
	for (A)

Total for (B) (one large)	1647.62
Wilson C. M. Austin	

5/13/02

Brent -

Wanted to see whether to use
+ of fuel cost so mileage, which
you prefer is OK

ATTACHMENT B

Mail To: Wilson Mcarthur

Res. No.: 30038

Arrive: 05/01/2002 12:13pm

Depart: 05/04/2002 12:00pm

Room: 425 - 2KNG

Rate: US\$75.00

Group: ' ,

Date	Description	Voucher	Amount
05/01/2002	Local Telephone	7516129	.50
05/01/2002	Local Telephone	7518715	.50
05/01/2002	Stroud's	7729-0001	14.44
05/01/2002	Local Telephone	8941019	.50
05/01/2002	In-Room Dining	7688-0001	32.31
05/01/2002	Long Distance Telephone	8016191122	7.31
05/01/2002	Long Distance Telephone	8013759799	5.93
05/01/2002	Long Distance Telephone	8015657133	5.93
05/01/2002	Transient Comm Revenue	bld-425	75.00
05/01/2002	State Sales Tax	bld-425	6.19
05/01/2002	Room Occupancy Tax	bld-425	3.00
05/01/2002	Valet Parking	-	9.00
05/02/2002	In-Room Dining	7696-0001	25.99
05/02/2002	Local Telephone	9355323	.50
05/02/2002	Local Telephone	9359876	.50
05/02/2002	Long Distance Telephone	8013759799	11.43
05/02/2002	Transient Comm Revenue	bld-425	75.00
05/02/2002	State Sales Tax	bld-425	6.19
05/02/2002	Room Occupancy Tax	bld-425	3.00
05/02/2002	Valet Parking	-	9.00
05/03/2002	Broad St. Grille	4446-0001	29.48
05/03/2002	Local Telephone	7518715	.50
05/03/2002	Local Telephone	8925682	.50
05/03/2002	Transient Comm Revenue	bld-425	75.00
05/03/2002	State Sales Tax	bld-425	6.19
05/03/2002	Room Occupancy Tax	bld-425	3.00
05/03/2002	Valet Parking	-	9.00
05/04/2002	Long Distance Telephone	9194679251	5.93
05/04/2002	Long Distance Telephone	7048274376	16.93
05/04/2002	VI xxxx2608 8/2003 04283	0000023791	-438.75
		Balance:	.00

ATTACHMENT C

Thank you for parking at
Park 'n JET
 — RECEIPT —

TIME OUT



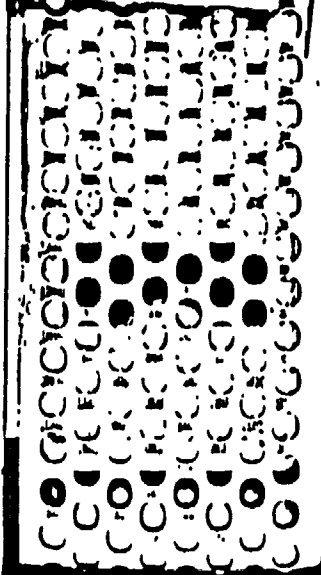
AMOUNT

\$ WSD

DID YOU KNOW WE...

- ... wash cars?
- ... wax cars?
- ... steam clean engines?
- ... shampoo fabric & carpets?
- ... have full mechanical services?

— ASK FOR DETAILS —
 ON YOUR NEXT VISIT



Golden Gallon #26
 9300 Lee Hwy.
 Ooltewah, TN. 37363
 33492026-08

GOLDEN GALLON 26
 9300 LEE HWY AND I
 OOLTEWAH TN

VISA
 MCARTHUR/WILSON C
 REF # 9800095007 5

DATE 05/05/02 13:52
 PUMP # 05
 PRODUCT UNLD
 GALLONS 9.198
 PRICE/G: \$ 1.290
 FUEL SALE \$ 11.87
 APPROVAL # 505997

We Appreciate
 Your Business!!!

AVIS. We try harder®

TRANSACTION RECORD

ENTAL NUMBER CAR NUMBER CAR GROUP

141450536 7625483 E
 MCARTHUR, WILSON
 WIZ- R7R03Y AWD- A113100
 CV CXXXXXXXXXXXXX2608

OUT ATL 30APR02/1923 MI-14806
 IN ATL 11MAY02/1021 MI-16108
 1392 MI@ .00-
 HR@ 13.67-

4 DY@ 39.16- 156.64
 1 WK@ 205.00- 205.00
 DISCOUNT .0 =
 * \$.72/DAY FEE = 7.92
 ONE WAY FEE/MISC-
 **11.11% FEE = 40.18

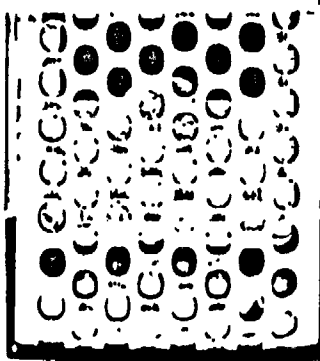
FUEL SERVICE =
 LOW =
 TAXABLE SUBTOT = 409.74
 TAX 10.000% = 40.97
 TOTAL CHARGES = 450.71
 * VEHICLE LICENSE FEE
 TX INCL3% ATLANTA CAR TAX

**CONCESSION RECOVERY FEE

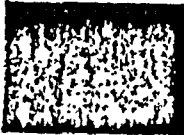
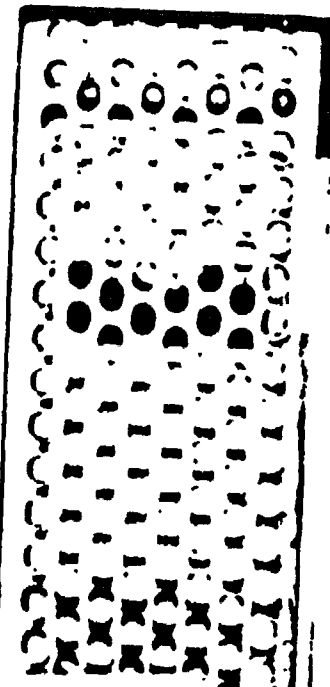
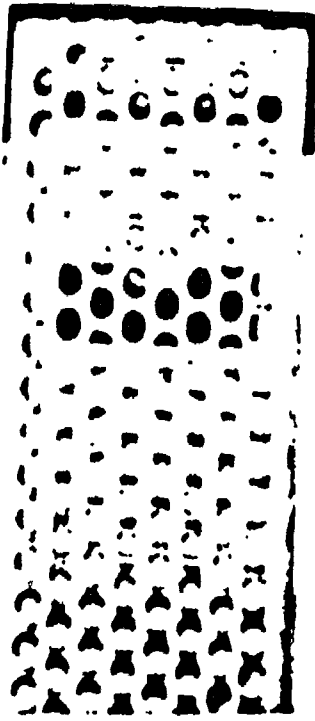
* Please check your car for personal effects *

* check your car for personal effects *

Thank you for renting from Avis.
 We value your business. Have a safe trip.



ATTACHMENT D



ons, airlines are
ights. Please
ontative.

unc

r City and
and Phone
d purposes.

ISSUED BY
UNITED
NOT VALID FOR TRAVEL
I ACKNOWLEDGE RECEIPT OF TICKET(S) AND/OR COUPON(S) FOR
RELATED CHANGES DESCRIBED HEREON AND AM AWARE OF APPLICABLE
INSTRUCTIONS AND/OR PENALTIES AS SHOWN ON EACH TICKET(S)
AND/OR COUPON(S)
SIGNATURE OF CARDHOLDER

X
NAME OF PASSENGER
MCARTHUR/WILSON C MR

NOT VALID FOR TRANSPORTATION

I.D. REQUIRED - VALID UA ONLY/ITL PLUS--TUL/VALID ON DL ONLY
FP/VOID IF BOUGHT OR SOLD CERT01675461625570/001 \$0.00USD CASH \$5.00USD FC 30APR SLC
DL ATL R0.00M Y DL SLC R0.00M Y MUC 0.00 END ROE1.00

FARE
TAX
TAX
TOTAL
AWARD
AY5.00
USD5.00

PASSENGER TICKET AND BAGGAGE CHECK
SUBJECT TO CONDITIONS OF CONTRACT ON REVERSE SIDE
PASSENGER RECEIPT

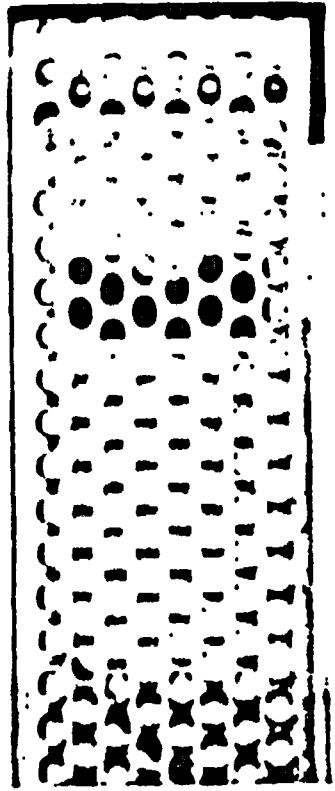
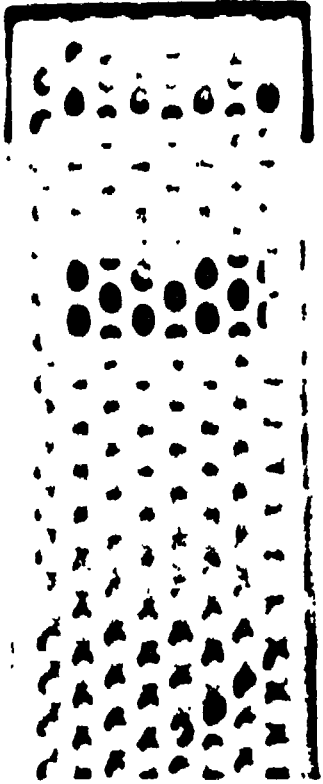
FLIGHT
YOUR CODE
AIRLINE CODE
C 63190-1
PLACE OF ISSUE IATA CODE
SLCTR_US13APR02
DATE OF ISSUE
STATUS
179459

THIS IS YOUR RECEIPT
DOCUMENT NUMBER
0 016 2180801958 0

ISSUED BY
UNITED
NOT VALID FOR TRAVEL
I ACKNOWLEDGE RECEIPT OF TICKET(S) AND/OR COUPON(S) FOR
RELATED CHANGES DESCRIBED HEREON AND AM AWARE OF APPLICABLE
INSTRUCTIONS AND/OR PENALTIES AS SHOWN ON EACH TICKET(S)
AND/OR COUPON(S)
SIGNATURE OF CARDHOLDER

NAME OF PASSENGER
MCARTHUR/WILSON C MR
SLCATL DL 1592 N30APR
ATLSLCDL 705 N11MAY

NOT VALID FOR TRAVEL
0 016 2180801958 0



UNITED

IDENTIFICATION IS REQUIRED AT CHECK-IN

PAGE: 01


MCCARTHUR/WILSON C MR

PNR: QXWLFM

Do not expose to excessive heat or direct sunlight.
STAPLE HERE
INSERT
8C0887
PRINTED IN U.S.A. BY MAGNETIC TICKET & LABEL CORP., WASHINGTON, D.C.

30 APR TU  DELTA FLIGHT: 1592 CLASS: N
SALT LAKE CTY DEPART: 125P TERMINAL 2
ATLANTA ARRIVE: 656P TERMINAL S

11 MAY SA  DELTA FLIGHT: 705 CLASS: N
ATLANTA DEPART: 1155A TERMINAL S
SALT LAKE CTY ARRIVE: 148P TERMINAL 2

TICKET: 016 2180801958 
FARE: USD5.00

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ATTACHMENT E

Fax 10/21/02

10/21/02

TRAVEL VOUCHER (PART 1)

Estimated burden per response to comply with this voluntary collection request: 1 hour for NRC Forms 64 and 64A or 64B. NRC uses the information to authorize payment for official travel. Forward comments regarding burden estimate to the Records Management Branch (T-8 E6), U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, or by e-mail to bja1@nrc.gov, and to the Desk Officer, Office of Information and Regulatory Affairs, NE08-10202, (3150-0192), Office of Management and Budget, Washington, DC 20503. If a means used to impose an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

FOLLOW INSTRUCTIONS

1. AUTHORIZATION NUMBER: R271268
2. SOCIAL SECURITY NO.: 263-48-4859

3 NAME (Last, First, Middle Initial): McArthur, Wilson C.
4 OFFICE TELEPHONE: 801-375-9799

5 MAILING ADDRESS (include ZIP Code): 2314 N 390 East Provo, UT 84604

6 RECLAIM VOUCHER YES NO
7. VOUCHER STATUS PARTIAL FINAL

8 TRAVEL PERIOD(S)
A FROM (MMDDYYYY) B TO (MMDDYYYY)

9 OFFICIAL DUTY STATION (City and State): Rockville, MD
10 RESIDENCE (City and State): Provo, UT

04/30/2002 05/04/2002

13 TYPE OF TRAVEL: CONUS/DOMESTIC
14 METHOD OF PAYMENT: HEADQUARTERS TO BE PAID BY EFT
15 AIRLINE ACCOMMODATIONS: OTHER PREMIUM CLASS

11. LEAVE TAKEN: OTHER
12. COMPARATIVE TRAVEL: X

17 TRANSPORTATION METHOD OF PAYMENT: GTR/GTS ACCT/GOVT ISSUED CARD/CASH
18. CARRIER
19 TRANSPORTATION GTR OR TICKET NUMBER
20. AMOUNT

16 EXPENSES CLAIMED (FROM NRC FORM 64A OR NRC FORM 64B)

Table with columns: A. SUBSISTENCE AND OTHER EXPENSES (\$646.44), B. PLANE, TRAIN, BUS (PAID BY TRAVELER) (\$702.00)

21. TRAVELER'S CERTIFICATION. I HEREBY ASSIGN TO THE UNITED STATES ANY RIGHT I MAY HAVE AGAINST ANY PARTIES IN CONNECTION WITH REIMBURSABLE TRANSPORTATION CHARGES DESCRIBED ABOVE, PURCHASED UNDER CASH PAYMENT PROCEDURES

C. TOTAL CLAIM: \$1,348.44

22. READ CAREFULLY (If voucher includes any of the following, mark the appropriate boxes)

23. TRAVEL ADVANCE TOTAL ADVANCE RECEIVED (Traveler: Must Complete)

REFUND DUE ON UNUSED TICKET, PARTIAL TICKET, AND/OR REFUND SLIP

ATM \$0.00

REMITTANCE ATTACHED IN THE AMOUNT OF \$ CHECK NO.

OTHER \$0.00

24. I CERTIFY THAT THIS VOUCHER IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF AND THAT PAYMENT OR CREDIT HAS NOT BEEN RECEIVED BY ME

FOR EXAMINER USE

SIGNATURE - TRAVELER: Wilson C. McArthur for WCM DATE: 7/2/02

AMOUNT TO BE APPLIED: 0

25 THIS VOUCHER IS APPROVED Associate General Counsel for Hearings, Enforcement, and Administration

BALANCE DUE

SIGNATURE - APPROVING OFFICIAL: Lawrence J. Chandler DATE: 7/5/02

NET TO TRAVELER: 651.44

27. TRAVELER DESIGNATION I DESIGNATE TO RECEIVE CASH PAYMENT OF THIS TRAVEL VOUCHER. I ACCEPT RESPONSIBILITY FOR THE PAYMENT ONCE THE IMPREST FUND CASHIER PROPERLY DISBURSES THE CASH TO MY DESIGNEE.

26. EXAMINER'S ADJUSTMENTS

SIGNATURE - TRAVELER DATE

EXAMINED BY: Don Coward DATE: 7/25/02

28. CASH PAYMENT OF TRAVEL VOUCHER (For Cashier Use)

29 THIS VOUCHER IS CERTIFIED CORRECT AND PROPER FOR PAYMENT

RECEIVED CASH IN THE AMOUNT OF \$ FOR SIGNATURE DATE NRC BADGE NUMBER

SIGNATURE - AUTHORIZED CERTIFYING OFFICER DATE

30. ACCOUNTING CLASSIFICATION (For Division of Accounting and Finance Use)

Table with columns: A COST, B PURPOSE CODE, C BFY, D COST ORGANIZATION CODE, E JOB CODE, F (2110-5) SUBSISTENCE AND OTHER, G (2120-D) COMMON CARRIER, H TOTAL. Row 1: DOMESTIC, 7, 2, 7C, E-7080, 646.44, 5.00, 651.44

* Fraudulent Claim - Falsification of an item in an expense account works a forfeiture of the Claim (28 U.S.C. 2514) and may result in a fine of not more than \$10,000 or imprisonment of not more than 5 years or both (18 U.S.C. 287, id 1001)

** If long distance telephone calls are included, the Approving Official must have been authorized in writing by the head of the Department or Agency to so certify (31 U.S.C. 630e).

TRAVELER'S COPY ADVANCE COPY MEMORANDUM AUTHORIZATION AUDIT FUNDS CONTROL

NRC FORM 64A

U.S. NUCLEAR REGULATORY COMMISSION

(6-1999)
NRCMD 14.1
Exception to SF 1012
Approved by NARS 10-81

TRAVEL VOUCHER (PART 2)
SCHEDULE OF EXPENSES AND AMOUNT CLAIMED
FOLLOW INSTRUCTIONS ON REVERSE OF FORM SET

NAME (Last, First, MI) McArthur, Wilson C.	AUTHORIZATION NO. R271268	DEPART FROM OFFICE	
	DATE (MM/DD/YY) 04/30/2002	TIME <input checked="" type="checkbox"/> A.M. <input type="checkbox"/> P.M. 11:00	

DATE 20 <u>02</u>	NATURE OF EXPENSE	AUTHORIZED MILEAGE 36.50 $\$$	NUMBER OF MILES	AMOUNT CLAIMED
	Official Business Travel on 5/1, 5/2, 5/3, and 5/11 (considered last day of travel). Personal Travel 4/30 and 5/4-10)			
4/30	LV: Residence via POA (Transportation to Airport paid by government) AR: Salt Lake City Airport whether 4/30 or 5/1.)		47	17.16
	LV: Salt Lake City Airport via Delta #1592 AR: Atlanta Airport			
	PURPOSE: Subpoenaed by NRC as witness in the Tennessee Valley Authority Hearing.			
5/11	LV: Atlanta Airport via Delta #705 AR: Salt Lake City Airport <i>Air Fare</i>			500
	LV: Salt Lake City Airport via POA AR: Residence		47	17.16
	SUBSISTENCE: 55/30/85			
5/1	MI&E: 3/4 day @ \$30.00			22.50
	Lodging: 1 night @ \$75.00			75.00
5/2-3	MI&E: 2 days @ \$30.00			60.00
	Lodging: 2 nights @ \$75.00			150.00
5/11	MI&E: 3/4 day @ \$30.00			22.50
	OTHER			
	Rental Car: 4 days + miscellaneous charges miscellaneous charges			194.61 <i>tel</i>
	Parking at Hotel three days			27.00
	Hotel tax: 3 nights @ \$9.19			27.57
	2 Phone calls to residence @ \$4.00			8.00
	3 business phone calls @ \$0.50			1.50
	Parking at Airport in Salt Lake City: 4 days @ \$5.86			23.44
	COMPARISON			
	Roundtrip from Salt Lake City, UT to Chattanooga, TN: \$1,599.00 There is no contract carrier.			
	Hotel & Tax: Same @ \$252.57 MI&E: Same @ \$105			
	Rental Car: 4 days @ \$43.00 + miscellaneous charges: \$160.00 Phone Calls to residence: Same @ \$12.00			
	TOTAL COMPARISON: \$2158.57			651.44 <i>04</i>

GRAND TOTAL (Amount to be shown in Item 16.C, Part 1)

\$ 646.44

NRC FORM 279
(5-2000)
NRCMD 14.1

U.S. NUCLEAR REGULATORY COMMISSION
OFFICIAL TRAVEL AUTHORIZATION

See NRC Management Directive 14.1 for detailed instructions for completing this form. All shaded areas must be completed. Form may be typed or handwritten.

1. AUTHORIZATION CODE	2. SOCIAL SECURITY NUMBER	3. AUTHORIZATION NUMBER
<input checked="" type="checkbox"/> New <input type="checkbox"/> Amend <input type="checkbox"/> Regular	<input type="checkbox"/> Blanket <input type="checkbox"/> Cancel	263-48-4859 R271268

TRAVELER INFORMATION

4. NAME OF TRAVELER (First two initials and last name)	5. PHONE NO.	6. TRAVEL PURPOSE CODE	7. EMPLOYEE CODE
W C McArthur	801-375-9799	7	<input checked="" type="checkbox"/> NRC EMPLOYEE/CONSULTANT
8. MAIL ADDRESS (P.O. Box, Street, or Office) (For travel advance)		9. FUND CODE	<input type="checkbox"/> OTHER NON NRC FEDERAL EMPLOYEE
2314 N 390 East		<input checked="" type="checkbox"/> X0200	<input type="checkbox"/> COMMISSIONER
CITY	STATE	ZIP CODE	<input checked="" type="checkbox"/> OTHER
Provo	UT	84604	

ACCOUNTING INFORMATION

10. ESTIMATED COST	11. BY	12A. BUDGET ORGANIZATION CODE	12B. COST ORGANIZATION CODE	12C. JOB CODE	13A. (2110-S) SUBSISTENCE AND OTHER	13B. (2120-C) COMMON CARRIER	13C. TOTAL	14. TRAVEL DATES	
DOMESTIC	2		7C	E7080	\$ 609.00	\$ 702.00	\$ 1,311.00	START	MM/DD/YY
FOREIGN								END	
								15. NUMBER OF OFFICIAL TRAVEL DAYS ONLY	4
16. INTERAGENCY AGREEMENT NUMBER					17. CONSULTANT CONTRACT NUMBER		13D. GRAND TOTAL	1,311.00	

ITINERARY				TRAVEL ADVANCE			
18. ACTUAL DUTY POINTS		19. SUBSISTENCE RATE		20. ADVANCE REQUESTED	A. AMOUNT	B. TYPE	C. DATE REQUIRED
A. FROM: Salt Lake City, UT		55/30/85		<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	\$ 0	<input type="checkbox"/> ATM <input type="checkbox"/> OTHER	
B. TO: Chattanooga, TN				SIGNATURE OF TRAVELER		DATE	
				Wilson C. McArthur		7/5/02	
C. RETURN TO: Salt Lake City, UT				21. ADVANCE ISSUED			
				SIGNATURE OF RECIPIENT		DATE	

TRAVEL AUTHORITY

Reimbursement for the items authorized below shall be limited to the allowances in NRCMD 14.1, the Federal Travel Regulations, and applicable Comptroller General Decisions.

22. TRANSPORTATION	DATE TICKET REQUIRED	23. SUBSISTENCE (Specify rate in itinerary block above)
<input checked="" type="checkbox"/> A. Common Carrier Contact: Carrier Non-use code ()		<input type="checkbox"/> A. Per diem-Lodgings plus M & IE rate
<input checked="" type="checkbox"/> B. Taxi/Limo		<input checked="" type="checkbox"/> B. Actual subsistence rate/adjacent area rate (justify in remarks)
<input checked="" type="checkbox"/> C. Rental car (justify in remarks)		<input type="checkbox"/> C. Special per diem rate (justify in remarks)
<input type="checkbox"/> D. Government-owned vehicle		24. OTHER
<input type="checkbox"/> E. Excess baggage - No. of bags		<input type="checkbox"/> A. Registration fee \$
<input type="checkbox"/> F. Other Special Conveyances (justify in remarks)		Meals included - No.: (Specify if breakfast, lunch or dinner)
USE OF PRIVATELY OWNED VEHICLE		Lodging included - No.:
<input type="checkbox"/> G. Advantageous to Government (justify in remarks) cents per mile.		<input type="checkbox"/> B. Miscellaneous expense (Specify in remarks)
<input type="checkbox"/> H. Not to exceed Cost of Common Carrier cents per mile.		<input type="checkbox"/> Annual leave to be used Supervisor's Initials
<input type="checkbox"/> I. Government vehicle available cents per mile.		Total hours or days
<input type="checkbox"/> J. Government vehicle assigned cents per mile.		Dates: From To
		<input type="checkbox"/> D. Government Charge Card: <input type="checkbox"/> YES <input type="checkbox"/> NO (If no, explain in Block 25)

25. PURPOSE OF TRAVEL/REMARKS (Indicate item number to which answer applies)

Subpoenaed by NRC as witness in the Tennessee Valley Authority Hearing. *118 - OK per John Walker*

~~22C. Transportation toll from airport/hotel/hearing~~ *Rental car not authorized for NRC employee*

23B. Actual rate of \$75.00. Authorization not submitted prior to travel.

*** ADMINISTRATIVE MIXUP: NO AUTHORIZATION SUBMITTED PRIOR TO TRAVEL.**

26. FOREIGN TRAVEL - CERTIFICATION OF FUNDS AVAILABILITY Funds are sufficient to cover the total estimated cost.	FOREIGN TRAVEL - CERTIFICATION OF AUTHORIZATION - The official travel described above has been reviewed and the expenses necessary to the performance thereof are authorized in accordance with the Federal Travel Regulations, as amended, NRC Management Directive 14.1, and under the conditions on the authorization.
TITLE	TITLE
SIGNATURE	SIGNATURE
DATE	DATE
28. ADMINISTRATIVE APPROVAL - The official travel directed herein was reviewed and is necessary to accomplishing the agency's programs and missions.	CERTIFICATION OF FUNDS / AUTHORIZATION - Funds are sufficient to cover the total estimated cost. The official travel described above has been reviewed and the expenses necessary to the performance thereof are authorized in accordance with the Federal Travel Regulations, as amended, NRC Management Directive 14, and under the conditions on the authorization.
TITLE Associate General Counsel for Hearings, Enforcement and Administration	TITLE
SIGNATURE Lawrence J. Chandier	SIGNATURE
DATE 7/5/02	DATE 7/10/02

ATTACHMENT F

Source: [Legal](#) > [Federal Legal - U.S.](#) > [Administrative Agency Materials](#) > [Individual Agencies](#) > [Board of Contract Appeals Decisions](#) ①

Terms: baranski "frequent flyer" miles ([Edit Search](#))

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2001 GSBICA LEXIS 252, *; 2002-1 B.C.A. (CCH) P31,684

In the Matter of LAWRENCE BARANSKI

GSBICA No. 15636-TRAV

General Services Administration Board of Contract Appeals

2001 GSBICA LEXIS 252; 2002-1 B.C.A. (CCH) P31,684

October 25, 2001

CORE TERMS: claimant, travel, ticket, billed, reimbursement, per diem, voucher, transportation, centrally, airline, coupon, frequent, flyer, card, miles, common carrier, individually, reimbursed, flight, fixed rate, regulation, redemption, emergency, redeemed, travelers, procure, auditor

JUDGES:

[*1] ANTHONY S. BORWICK, Board Judge.

COUNSEL:

Lawrence Baranski, Oklahoma City, Oklahoma, Claimant.

Michael J. Upton, Program Director, Office of Financial and Budget Services, Federal Aviation Administration Aeronautical Center, Department of Transportation, Oklahoma City, Oklahoma, appearing for Department of Transportation.

OPINIONBY: BORWICK

OPINION:

ANTHONY S. BORWICK, Board Judge.

In this case, we sustain the agency's determination that claimant could not be reimbursed for an airline ticket used for his travel on temporary duty (TDY) when the claimant had obtained the ticket by redeeming a voucher he had received during personal travel.

On May 16, 2001, the agency authorized claimant's TDY from Oklahoma City, Oklahoma, to Orlando, Florida, for the period June 10 through June 15, 2001. Instead of purchasing a ticket through an individually billed travel card or a centrally billed account, or by using a Government Travel Requisition (GTR), claimant redeemed flight vouchers he received from United Airlines for relinquishing his seat on another flight involving personal travel. Claimant explained that he used the vouchers because "I wanted my wife to accompany me to [Florida]. I understood that I could not **[*2]** use the government rate for my wife so we elected to travel together."

Claimant submitted a travel voucher, with a receipt from United Airlines as an attachment, on which he claimed \$ 361 as reimbursement for the value of his airline ticket. The agency auditor noted that the receipt did not list a "form of payment" which would have shown whether claimant used a Government charge card or whether the ticket was billed to a centrally billed Government account. Upon being questioned about the discrepancy, claimant stated that he had used airline vouchers for his TDY. The agency denied reimbursement of the \$ 361. Claimant appealed that determination to the Board, and reduced his reimbursement request to \$ 312.82.

Claimant also raised another issue as to the amount of his per diem:

My submitted travel voucher prepared automatically also only allowed me a fixed rate of per diem for my travel days which is contrary to the FAATP amendment 6 which states I was allowed 3/4 of the per diem rate (\$ 30) on travel days. The auditor did not look at this.

The agency has promulgated the Federal Aviation Administration Travel Policy (FAATP), which is similar to the Federal Travel Regulation [*3] (FTR). FAATP 301-2.1 provides that the purpose of the travel allowance is "to reasonably reimburse an employee for additional expenses incurred as a result of performing [TDY] travel for the FAA."

Here, the agency denied claimant reimbursement of the claimed \$ 361 because claimant did not incur the expense.

It has long been the case that Government travelers who have acquired airline tickets for their TDY by redemption of frequent flyer miles or coupons acquired on personal travel may not be reimbursed for the supposed value of the tickets because of: (1) the subjectivity that would be involved in ascertaining the value of frequent flyer miles or coupons, (2) the problems of control and accountability in allowing reimbursement for frequent flyer miles and coupons, and (3) the lack of guidance in statute and regulation on how to value such items. Roy W. Roth, GSBGA 14203-TRAV (Feb. 27, 1998); Phillip E. Trickett, B-224054 (Mar. 17, 1987) (construing statute and analogous provisions of the FTR). In other words, in the absence of specific statutory or regulatory guidance, it is not possible to conclude that an employee who redeemed frequent flyer miles or a coupon to obtain [*4] a ticket for Government travel actually incurred an expense, and it is not possible, with any certainty, to ascertain the amount of the expense.

In arguing against that result, claimant argues that Board precedent "appears to have room for interpretation" and that "as we evolve changes to policy are effected." However, regulation and past construction of similar FTR provisions result in our conclusion that claimant may not be reimbursed for redemption of his flight coupon here.

Claimant also argues that the FAATP is confusing. FAATP 301-51.100, however, requires employees traveling on TDY to use an individually billed travel card, a centrally billed account, or a GTR to procure common carrier transportation costing more than \$ 100. Specific authorization is required if an employee wishes to use cash to pay for common carrier transportation. FAATP 301-2.7. Use of cash generally is authorized when the transportation costs between \$ 10 and \$ 100, FAATP 301-51.100, or in emergency circumstances where the use of a travel card, centrally billed account, or GTR is not possible. FAATP-301-51.103.

The FAATP, therefore, is clear that, except for common carrier transportation of \$ 100 or [*5] less, or in cases of emergency, Government travelers must use an individually billed travel card, a centrally billed account, or a GTR to procure the transportation. Employees act at their own risk when they fail to adhere to this provision. In denying reimbursement for the \$ 361, the agency correctly applied statute and the FAATP.

As to the per diem, the agency has recently advised claimant and the Board that it will pay claimant the difference between the three-quarters day per diem amount and the fixed rate amount it had already paid to claimant, minus the cost of meals consumed provided to claimant by the facility. The per diem issue is moot.

The decision of the agency refusing claimant's reimbursement for the airline ticket is sustained.

ANTHONY S. BORWICK
Board Judge

ATTACHMENT G

Source: [Legal](#) > [Federal Legal - U.S.](#) > [Administrative Agency Materials](#) > [Individual Agencies](#) > [Board of Contract Appeals Decisions](#) ①

Terms: baranski "frequent flyer" miles ([Edit Search](#))

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1998 GSBCA LEXIS 109, *; 98-1 B.C.A. (CCH) P29,678

In the Matter of SABAH A. ISSA

GSBCA No. 14140-TRAV

General Services Administration Board of Contract Appeals

1998 GSBCA LEXIS 109; 98-1 B.C.A. (CCH) P29,678

March 30, 1998

CORE TERMS: voucher, ticket, travel, airline, coupon, flight, reimbursement, carrier, trip, itinerary, regulation, travel agent, reimbursed, reimburse, transportation, reimbursing, frequent, domestic, flyer, vacation, air carriers, purchasing, out-of-pocket, discount, gesture, flown, miles, fare

JUDGES:

[*1] ROBERT W. PARKER, Board Judge.

COUNSEL:

Sabah A. Issa, Bettendorf, IA, Claimant.

Bobby A. Derrick, Acting Director, Finance and Accounting Systems Transition, Defense Finance and Accounting Service, Indianapolis Center, Indianapolis, IN, appearing for Department of Defense.

OPINIONBY: PARKER

OPINION:

ROBERT W. PARKER, Board Judge.

The Defense Finance and Accounting Service (DFAS) has requested a decision pursuant to 31 U.S.C. § 3529 concerning a claim for air travel costs filed by Mr. Sabah A. Issa. In August 1996, Mr. Issa, a civilian employee of the Department of the Army in Moline, Illinois, was issued airline tickets needed for his temporary duty assignment in Europe. The tickets were issued by a travel agent under contract with the Government at a cost of \$ 1,783.75. When Mr. Issa noticed that the tickets included several flights on Alitalia (an Italian airline), he returned the tickets to the travel agent. Mr. Issa then obtained tickets on the same flights directly from Alitalia, using a voucher from Alitalia for \$ 882 and paying the balance of \$ 819.63 in cash. Mr. Issa had acquired the voucher in connection with a personal vacation. The voucher, issued on October **[*2]** 6, 1995, came with the following letter:

Per our conversation of October 3, 1995 we have reviewed once again the occurrence and, as gesture of good will, we are offering a voucher in the amount of \$ 882.00, representing the difference in air fare paid.

The voucher is valid for one year from the date of issue and may be used toward future air transportation on Alitalia service. Since you indicated that you will be traveling to Amman in the near future, I noted the voucher accordingly.

Mr. Issa claimed reimbursement of a total of \$ 1,701.63, which included \$ 882 for the value of the voucher, \$ 795.45 paid in cash for the balance of the flights on Alitalia, and \$ 24.18 paid in cash for a round-trip ticket from Moline to Chicago on United Airlines. The agency allowed the claim for the cost of the flight on United Airlines, but denied reimbursement for the flights on Alitalia. The Army denied reimbursement because (1) Mr. Issa should have used the tickets provided by the Government contract travel agent, (2) Mr. Issa should have flown the entire trip on an American-flag carrier which, according to the Army, was available for the European leg of the trip, and (3) the Government [*3] may not reimburse an employee for using a personal travel coupon for Government business.

Discussion

Purchasing tickets directly from an airline

The Army denied Mr. Issa's claim for reimbursement of the entire cost of the tickets on Alitalia because Mr. Issa purchased the tickets directly from the airline, instead of obtaining them from the Government contract travel agent. The Joint Travel Regulations (JTR), on which the Army relied, provide as follows:

Use of Travel Offices. In arranging official travel, employees are authorized to use the following in accordance with Service regulations:1. Commercial travel offices (CTO) under contract to their respective organizations;2. In-house travel offices;3. General Services Administration (GSA) Travel Management Centers (TMC). Except as indicated in subparagraph B below [not applicable here], when an employee purchases transportation from a CTO not under contract to the Government, reimbursement is not authorized unless it can be demonstrated that the employee had no alternative.

JTR C2207-A.

Notably, the regulation does not say that employees must use one of the three types of [*4] travel offices; it says that employees are "authorized" to do so. The regulation goes on to say that if an employee purchases transportation from a commercial travel office other than one of those listed, he may not be reimbursed for the ticket. The regulation says nothing at all about purchasing tickets directly from an airline. We know of no provision, either in the JTR or in the Federal Travel Regulation (FTR), that prohibits an agency from reimbursing an employee for the cost of a ticket purchased directly from an airline. n1

-----Footnotes-----

n1 The authority to purchase tickets directly from an airline is not without limits. Federal employees are required to use discount fares offered by air carriers under contract with the Government between certain cities when such fares are available. 41 CFR 301-2.2(d)(1)(ii) (1996). This requirement is not at issue here because no contract air service is available for the European portions of Mr. Issa's trip.

-----End Footnotes-----

Requirement to use an American-flag carrier

The second reason given by the [*5] Army for not reimbursing Mr. Issa is that he should have flown the European portion of his trip on an American-flag carrier, which the agency believes was available. Paragraph C2204-B of the JTR requires that employees use domestic United States airlines (called "certificated" air carriers) for foreign travel if travel on such carriers is available. Mr. Issa has stated that, to the best of his knowledge, travel by a domestic airline was unavailable. The record

shows that Mr. Issa took the same flights booked for him by the Government's contract travel agent.

The agency's statement that American-flag carriers were available for some of the flights in Europe is somewhat attenuated. The Army explains that, if Mr. Issa had followed his original itinerary for the travel, he could have taken several American-flag carriers, and implies that Mr. Issa changed his itinerary so that he would have to fly on Alitalia (and could thus use his personal voucher). Mr. Issa responds that his travel itinerary was changed due to conflicts in meeting dates and limited availability of Government personnel in Europe. He also points out, correctly, that his travel orders recognized that his itinerary was [*6] subject to change and authorized Mr. Issa to vary it as necessary.

The bottom line here is that the Army travel office does not really know why Mr. Issa changed his itinerary. Given the language in Mr. Issa's travel orders, which permitted him to vary the itinerary, Mr. Issa's statement that the amended itinerary was necessary to accomplish the Government's business, and the lack of a statement from one of Mr. Issa's superiors disputing Mr. Issa's explanation, we do not find reasonable the Army's decision to base Mr. Issa's right to reimbursement on a trip which he did not take. Mr. Issa has stated that no American-flag carriers were available for the European portion of the trip that he did take and the Army has provided no evidence to the contrary. Accordingly, the fact that Mr. Issa flew on a foreign-flag carrier would not prevent him from being reimbursed for the cost of the tickets.

Use of a personal travel voucher

Mr. Issa used a personal voucher, which he had acquired in connection with a vacation, to "pay" \$ 882 toward his tickets on Alitalia. The Army's position is that, even if reimbursement for the flights is otherwise permissible, an employee may not be reimbursed [*7] for the value of a coupon or voucher which was not obtained in connection with Government business. Here, we agree with the Army that Mr. Issa may not be reimbursed for the value of his voucher.

The Board has recently considered the issue of reimbursing employees for such things as frequent flyer miles, coupons and vouchers obtained in connection with personal business. In Roy Roth, GSBGA 14203-TRAV (Feb. 27, 1998), the Board followed the longstanding rule of the Comptroller General that, in the absence of regulations specifically permitting it, the Government may not reimburse employees for the value of frequent flyer miles, coupons or vouchers obtained in connection with personal business. This is because, when the employee uses one of these items, he incurs no out-of-pocket expense. In addition, the "value" of such things is subject to interpretation. Finally, using coupons and vouchers obtained in connection with personal business for Government travel creates problems of control and accountability. Id. at 2.

Mr. Issa argues that the voucher he used for the Allitalia portion of his trip "was not a free coupon, frequent flyer coupon or a discount coupon. It was compensation [*8] from Allitalia Airlines for money I paid on a previous trip." Although we are sympathetic to Mr. Issa's situation, we do not agree with his argument. Mr. Issa used an airline voucher which he obtained in connection with a dispute with Alitalia concerning personal business. The voucher, which the airline called a "gesture of good will," was about to expire. The extent to which Mr. Issa was actually out-of-pocket and the value of the limited-life coupon are, at best, uncertain. Given the absence of regulations permitting reimbursement for such items, we hold that the Army was reasonable in declining to reimburse Mr. Issa.

Decision

The claim is granted in part. The agency shall reimburse Mr. Issa in the amount of \$ 819.63 (the amount of the claim, \$ 1701.63, less the amount of the voucher, \$ 882). n2

-----Footnotes-----

n2 This amount includes the \$ 24.18 for domestic airfare which the agency agrees is due Mr. Issa. If

Mr. Issa has already received reimbursement for this item, the agency should subtract \$ 24.18 from the award.

-----End Footnotes-----

ROBERT [*9] W. PARKER
Board Judge

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Terms: baranski "frequent flyer" miles ([Edit Search](#))

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ATTACHMENT H

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Terms: biernaski "frequent flyer" ([Edit Search](#))

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65 Comp. Gen. 171; 1985 U.S. Comp. Gen. LEXIS 5, *

MATTER OF: Martha C. Biernaski

B-215897

Comptroller General of the United States

65 Comp. Gen. 171; 1985 U.S. Comp. Gen. LEXIS 5

December 31, 1985

CORE TERMS: ticket, airline, travel, constructive, reimbursement, consulting firm, legal obligation, transportation, reimbursed, regulation, civilian, personal expense, free ticket, constructive, reimburse, procured, attend

HEADNOTES:

[*1]

An employee who used a free airline ticket issued because of her husband's membership in an airline's frequent travelers club for travel on Government business may not be reimbursed the constructive cost of the airline ticket since she has not demonstrated that she paid for that ticket or had a legal obligation to do so. Thus it is concluded that she acquired the transportation at no direct personal expense.

OPINION:

The Farm Credit Administration has requested an advance decision concerning the propriety of payment of the constructive cost of airfare to Mrs. Martha (Marilyn) C. Biernaski. n1 Mrs. Biernaski may not be reimbursed the constructive expense incurred in attending the conference since she acquired the airline ticket in question at no direct personal expense.

n1 This decision is issued in response to a request from Victor L. Summers, Chief, Budget and Accounts Section, Administrative Division, Farm Credit Administration.

Mrs. Biernaski, a former employee of the Farm Credit Administration, was issued a Government Travel Request and purchased an airline ticket to attend a conference in San Diego, California. However, she did not use that ticket n2 but instead used a ticket [*2] issued to her husband as a member of the Frequent Travelers Club of Eastern Airlines. She claims reimbursement of the constructive cost that the Farm Credit Administration would have paid had she not used the ticket obtained by her husband for travel to attend the conference in San Diego, California. Mrs. Biernaski has based her claim on the fact that the Farm Credit Administration informed her that she could use whatever means of transportation she wished and they would reimburse her on an actual or constructive basis.

n2 The coach ticket that was procured with the Government Travel Request was returned to the airline and the cost of it was refunded to the Farm Credit Administration.

Apparently Mrs. Biernaski was not aware that when the Government reimburses an employee for travel expenses on a constructive basis only actual costs incurred by the employee may be reimbursed and that reimbursement is limited to the constructive amount it would have cost had the Government procured the transportation directly.

When informed that reimbursement on a constructive basis required the employee to present

evidence of expenses actually incurred, Mrs. Biernaski submitted a letter from [*3] her husband's consulting firm indicating that she had agreed to pay \$600 for use of the free ticket. The letter indicates that no payment had been received by the consulting firm, but that it was expected.

As to the travel of civilian employees of the Government, 5 U.S.C. § 5706 provides that "only actual and necessary travel expenses may be allowed * * *." Implementing regulations contained in paragraph 1-2.1, Federal Travel Regulations, FPMR 101-7, Incorp. by ref. 41 C.F.R. § 101-7.003 (1983), provide that, "Transportation expenses which the Government may pay either direct or by reimbursement include fares * * * and other expenses."

Under these provisions of statute and regulation, civilian employees may not be allowed gratuitous payments, but they may be allowed reimbursement of travel expenses necessarily incurred by them in complying with travel requirements imposed upon them by the Government. See, for example, Bornhoft v. United States, 137 Ct. Cl. 134 (1956); and Captain Dene B. Stratton, USN, 56 Comp. Gen. 321 (1977).

Although Mrs. Biernaski claims that she owes her husband's consulting firm \$600 for the free airline ticket issued to him by Eastern Airlines, [*4] there is no evidence that a legal obligation has arisen or that payment has been made. In that connection we note particularly that the free ticket was issued because Mr. Biernaski was a member of the Frequent Travelers Club; that it was not issued to his consulting firm; and that it has not been demonstrated to be the subject of a legal obligation for payment. Since we are unable to conclude that Mrs. Biernaski incurred any ascertainable personal expenses for the ticket in question her claim should be disallowed.

Source: [Legal > Federal Legal - U.S. > Administrative Agency Materials > US Comptroller General Decisions](#) ①

Terms: biernaski "frequent flyer" ([Edit Search](#))

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ATTACHMENT I



Tennessee Valley Authority, 400 West Summit Hill Drive, Knoxville, Tennessee 37902-1401

May 23, 2002

Jennifer M. Euchner, Esq. (By Overnight Messenger)
U.S. Nuclear Regulatory Commission
Office of the General Counsel
One White Flint North
11555 Rockville Pike
Rockville, Maryland 20852-2738

Re: In the Matter of Tennessee Valley Authority (Watts Bar Nuclear Plant,
Unit 1; Sequoyah Nuclear Plant, Units 1 & 2; Browns Ferry Nuclear Plant,
Units 1, 2 & 3)

Dear Ms. Euchner:

We are enclosing the expenses incurred by Dr. McArthur when he appeared to testify pursuant to the NRC Staff's subpoena. As we discussed, it is appropriate for the Staff to reimburse Dr. McArthur's expenses. We would appreciate it if you would let us know how you calculate his reimbursement, so we can determine if TVA can pay any of the nonreimbursed portion.

As we discussed, we are also enclosing a copy of the Supervisor's Handbook, marked Bates Nos. GF000001-62, which should help provide a key explanation of how TVA determines competitive levels.

Thank you for your cooperation.

Sincerely,

A handwritten signature in black ink, appearing to read 'Brent Marquand', written over a horizontal line.

Brent R. Marquand
Senior Litigation Attorney

Telephone 865-632-4251
Facsimile 865-632-6718

Enclosures

cc: Dr. Wilson C. McArthur
2314 North 390 East
Provo, Utah 84604

003695298

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
TENNESSEE VALLEY AUTHORITY) Docket Nos. 50-390-CivP; 50-327-CivP;
(Watts Bar Nuclear Plant, Unit 1;) 50-328-CivP; 50-259-CivP;
Sequoyah Nuclear Plant, Units 1 & 2) 50-260-CivP; 50-296-CivP
Browns Ferry Nuclear Plant, Units 1, 2, 3) ASLBP No. 01-791-01-CivP
EA 99-234

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE TO TENNESSEE VALLEY AUTHORITY'S MOTION TO COMPEL" in the above-captioned proceeding have been served on the following by deposit in the United States mail; through deposit in the Nuclear Regulatory Commission's internal system as indicated by an asterisk (*), or by electronic mail as indicated by a double asterisk (**) on this 6th day of September, 2002.

Administrative Judge **
Charles Bechhoefer, Chairman
U.S. Nuclear Regulatory Commission
Atomic Safety and Licensing Board Panel
Mail Stop: T-3F23
Washington, D.C. 20555

Administrative Judge **
Ann Marshall Young
U.S. Nuclear Regulatory Commission
Atomic Safety and Licensing Board
Mail Stop: T-3F23
Washington, D.C. 20555

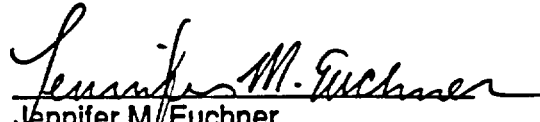
Thomas F. Fine **
Brent R. Marquand **
John E. Slater **
Barbara S. Maxwell **
Tennessee Valley Authority
400 West Summit Hill Drive
Knoxville, Tennessee 37901-1401

Administrative Judge **
Richard F. Cole
U.S. Nuclear Regulatory Commission
Atomic Safety and Licensing Board Panel
Mail Stop: T-3F23
Washington, D.C. 20555

Office of the Secretary *
ATTN: Rulemaking and Adjudications Staff
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Office of Commission Appellate Adjudication
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David Repka
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Washington, D.C. 20005


Jennifer M. Euchner
Counsel for NRC Staff