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**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D. C. 20548**

NOV 1 1976

FILE: B-185048

DATE:

MATTER OF: Samuel H. Sackman - Claim for additional miscellaneous expense for loss on dental contract

DIGEST: Employee claims additional miscellaneous expense on basis that he paid \$800 at his former duty station for completion of all orthodontia work required, that he had received adjustment of \$100 at former duty station and that he had paid \$359 at new duty station for completion of work. Employee seeks difference between latter amount and \$100 adjustment. Forfeiture loss under FTR para. 2-3.1.b(5) (May 1973) must be determined pursuant to specific terms of contract, and matters independent thereof, such as cost of completing work or obtaining replacement at new duty station are not for consideration. However, in absence of contractual provision regarding termination, employee may be reimbursed on "degree of completion" basis.

This action is in response to the letter of September 30, 1975, from Mr. Guy Marino, an Authorized Certifying Officer with the Federal Mediation and Conciliation Service (Service). Mr. Marino forwards a voucher submitted by Mr. Samuel H. Sackman, an employee of the Service, for reimbursement of miscellaneous expense in the amount of \$259, under the following circumstances.

Mr. Sackman was transferred from Buffalo, New York, to Los Angeles, California, during August 1974. Incident to that transfer, Mr. Sackman was reimbursed \$200 as miscellaneous expense. He also claimed an additional \$259 on the basis that such amount represented a forfeiture loss on a dental contract for the purpose of Federal Travel Regulations (FPMR 101-7) para. 2-3.1.b (5) (May 1973). Mr. Sackman submitted the following statement in justification of his claim:

"I entered into a contract with Dr. Carl Gugino of 7 Englewood Avenue, Buffalo, New York, to complete all orthodontal work on my son for the total sum of \$800.00. Had I not accepted the request by my Service to transfer, all of the orthodontal work for my son would have been completed for the total of \$800.00. There would not have been any extra charges.

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"I accepted the request to transfer to Los Angeles. As a result, it cost me an additional \$359\* \* \* to complete the orthodontal work that would have been completed in Buffalo had I not transferred for no extra cost to me.

"I received a credit of \$100 from Dr. Gugno.

"I therefore believe I am entitled to the difference between the \$359.00 additional cost and the \$100.00 credit; a total of \$259.00."

Federal Travel Regulations para. 2-3.1, b provides a list of the types of cost intended to be reimbursed under the miscellaneous expense provision. The fifth item listed under that paragraph is: "Forfeiture losses on medical, dental, and food locker contracts that are not transferable." The question presented is whether the subject claim may be paid under that provision.

The elements required under the above provision in order to perfect entitlement to reimbursement are that; A forfeiture loss must have occurred, such loss was incident to a medical, dental, or food locker contract, and, such contract was not transferable.

We believe that determinations as to whether a forfeiture loss has occurred for the purpose of FTR para. 2-3.1, b(5) should be based on the specific terms of the contract involved, and that factors such as the cost of completing work or obtaining a replacement at the new duty station, are not for consideration.

However, in Mr. Sackman's case, it appears that no written contract was entered into with regard to the orthodontia work required by his son, and there apparently exists no specific contractual provision concerning adjustments to be made in the event that the contract is terminated prior to completion. We believe that in most cases involving claims for forfeiture losses under medical, dental, or food locker contracts, there will exist no contractual provision concerning adjustment in the event of early termination. Accordingly, in order to give effect to FTR para. 2-3.1, b(5) this Office would not object, in those cases where there is no specific contractual provision concerning adjustment in the event of early termination, to reimbursement of claims under FTR para. 2-3.1, b(5) on the basis of the degree of completion of

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the contracted for services. In such a case, the employee should submit evidence indicating the contract price for the services at the former duty station, the number of months of performance received, the estimated number of months of orthodontistry yet to be performed, and the amount of any adjustment received from the former dentist. On the assumption that the total period necessary for orthodontia services is a constant, i. e., remains the same whether the work is performed by the same or different dentists, the amount of reimbursement may be computed by prorating the dollar amount of the original contract over the total months of orthodontia services to be performed under both the old and the new contracts to arrive at what would have been the average monthly rate for completion under the old contract. This monthly rate multiplied by the number of months of service necessary under the new contract, less any adjustment received by the employee under the old contract, is the measure of forfeiture.

To illustrate the above computation, consider the case of an employee who has a fully paid for orthodontia contract in the amount of \$1,000. The employee is transferred after 12 months of service have been performed and the dentist gives the employee an adjustment in the amount of \$200 for the uncompleted work. At the new duty station, the employee's new dentist estimates that it will require 8 months to complete the work. Given these facts, the amount that the employee may be reimbursed for the forfeiture loss would be computed as follows:

- Step 1: The total period of performance equals the 12 months performed under the old contract plus the 8 months estimated under the new contract, or a total of 20 months.
- Step 2: The monthly rate equals the cost of the old contract, \$1,000, divided by the total period of performance, 20 months, or \$50 per month.
- Step 3: The amount which may be reimbursed equals the monthly rate of \$50 multiplied by the 8 months of performance under the new contract, or \$400, less the \$200 adjustment received by the employee.

In this example, the proper reimbursement for the forfeiture loss on the dental contract would be \$200.

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In Mr. Sackman's case, since there is no specific contractual provision regarding early termination, reimbursement should be computed in accordance with the above.

Paul G. Dembling

For  
Comptroller General  
of the United States