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Comptroller General
of the United States

United States General Accounting Office
Washington, DC 20548

Decision

Matter of: United States Commission on Civil Rights—Parking Fees for Employees with Disabilities

File: B-291208

Date: April 9, 2003

DIGEST

1. Parking fees of employees with disabilities may not be paid under the transit pass transportation fringe benefit program authorized by 5 U.S.C. § 7905 and Executive Order No. 13150. Neither the statute nor the executive order provides for the government's paying parking fees of employees who commute by privately owned vehicles, and the stated purposes of the program are to improve air quality and to reduce traffic congestion by encouraging employees to commute by other than single occupancy motor vehicles. Payment of parking fees would encourage employees to use privately owned vehicles for commuting contrary to the stated purposes of the program.
2. Where there is no indication that an employee with a disability is limited or disadvantaged in performing agency work because of the disabling condition, and the agency states that it does not believe that reasonable accommodations are necessary for any of its employees with disabilities since they are currently performing all necessary job duties and functions, the agency may not properly pay the parking fees out of appropriated funds as a reasonable accommodation pursuant to the Rehabilitation Act.
3. General rule that appropriated funds may not be used to pay for parking costs of federal employees who commute to work by privately owned vehicles applies to employees with disabilities, but under an earlier Comptroller General decision, 63 Comp. Gen. 270 (1984), an exception to the rule may be warranted. If an agency finds that employees with severe disabilities must pay substantially more for parking than employees without disabilities able to park at facilities further away, and the agency believes that having employees with disabilities pay substantially more for

parking than employees without disabilities could frustrate the hiring and retention of persons with disabilities or adversely impact upon the agency's operational efficiency, then the agency may pay that difference if it so chooses.

DECISION

By letter dated August 6, 2002, the Deputy General Counsel of the United States Commission on Civil Rights (the Commission) asks whether parking benefits for employees with disabilities, who commute to work in privately owned vehicles rather than by mass transit or in vanpools, may be included in the federal government's transit pass transportation fringe benefit program. In the alternative, the Commission asks whether it may use appropriated funds to pay the parking fees of employees with disabilities who commute to work in privately owned vehicles as a "reasonable accommodation" under the Americans with Disabilities Act (ADA), or whether there is any other legal means to pay any part of the parking fees for employees with disabilities. For the reasons that follow, we conclude that the Commission may not pay the parking fees of employees with disabilities either under the transit pass transportation fringe benefit program or as a reasonable accommodation under the facts presented here. However, if the Commission determines that an employee's severely disabling condition is the principal reason that the employee must pay parking costs that are substantially more than those incurred by employees without disabilities working at the same facility and able to park at less expensive facilities further away, and the Commission believes that having employees with disabilities pay substantially more for parking than employees without disabilities could frustrate the hiring and retention of persons with disabilities or adversely impact upon the agency's operational efficiency, then the Commission may pay the difference if it so chooses. 63 Comp. Gen. 270 (1984).

BACKGROUND

Section 2(a) of the Federal Employees Clean Air Incentives Act¹ amended title 5 of the United States Code by adding section 7905, which authorizes each agency head to establish a program to encourage employees to use means other than single occupancy motor vehicles to commute to and from work. 5 U.S.C. § 7905. The stated purposes of the Act are to improve air quality and to reduce traffic congestion by providing for the establishment of programs to encourage federal employees to commute by means other than single occupancy motor vehicles. 5 U.S.C. § 7905 note. Programs established under section 7905 may include such options as: transit passes (including cash reimbursements for transit passes); furnishing space, facilities, or services to bicyclists; and non monetary incentives. 5 U.S.C. § 7905(b)(2).

¹ The Federal Employees Clean Air Incentives Act, § 2(a), Pub. L. No. 103-172, 107 Stat. 1995 (Dec. 2, 1993).

In signing Executive Order No. 13150,² entitled "Federal Workforce Transportation," the President ordered federal agencies in the National Capital Region³ to implement a transit pass transportation fringe benefit program. Under the transit pass transportation fringe benefit program, agencies are to provide their employees with transit passes⁴ in amounts approximately equal to commuting costs⁵ in addition to their current compensation. The stated purposes of Executive Order No. 13150 are "to reduce Federal employees' contribution to traffic congestion and air pollution and to expand their commuting alternatives"

Pursuant to Executive Order No. 13150, the Commission provides transit subsidies to employees who certify that they use mass transit or vanpools to commute to work. The Department of Transportation, which administers the Commission's transit subsidy program, issues "Metrochek" transit fare cards to eligible Commission employees on a quarterly basis based upon each employee's actual transit costs. The Metrochek fare cards can be used to pay for the Metro subway system and buses, other public buses, and participating vanpools. The Commission has no other commuting expense subsidy program. The Commission does not provide parking spaces for its employees who commute by privately owned vehicles nor does it subsidize the parking expenses of its employees who park their privately owned vehicles at commercial parking lots.

The Commission advises us that an employee with a disability who commutes to work in a privately owned vehicle has asked the Commission to pay her parking fees, in lieu of giving her fare cards to ride public transportation or paying vanpool expenses, since she is unable to participate in the transit subsidy program.⁶ The Commission informs us that there are several other employees with disabilities at the Commission, none of whom have applied for transit subsidies. The

² Exec. Order No. 13150, U.S.C. §7905, note.

³ Located in Washington, D.C., the Commission is within the National Capital Area as defined in Executive Order No. 13150.

⁴ Section 7905 (a)(4) of title 5 of the United States Code states that the term "transit pass" means a transit pass as defined in 26 U.S.C. § 132(f)(5), which defines transit pass as any pass, token, fare card, voucher, or similar item entitling a person to transportation (or transportation at a reduced price) if such transportation is on mass transit facilities or provided by a person in the business of transporting persons for compensation or hire in a vehicle with a seating capacity of at least 6 adults (not including the driver).

⁵ The amount of transit passes given an employee may not exceed \$100 per month, the maximum level allowed under 26 U.S.C. § 132(f)(2).

⁶ No explanation has been offered concerning why this employee is unable to use mass transit or to ride in a vanpool.

Commission's Office of General Counsel believes that it would be improper to provide parking benefits to employees with disabilities under the transit subsidy program.

DISCUSSION

The first question is whether parking benefits for employees with disabilities who commute to work in privately owned vehicles are included in the federal government's transit subsidy program.

The government's basic policy regarding parking is that it is the employee's responsibility to furnish transportation to and from the place of employment or duty, and if an employee chooses to use a private automobile for such purpose the government is under no obligation to provide a parking space. 43 Comp. Gen. 131 (1963). As explained in further detail below, with one exception, this basic policy on the provision of commercial parking applies equally to employees with disabilities. See 63 Comp. Gen. 270 (1984).

As mentioned in the background, this transit subsidy program authorizes agency heads to establish programs to encourage employees to use means other than single occupancy vehicles to commute to and from work. 5 U.S.C. § 7905. The statute specifies that programs may include: transit passes; furnishing space, facilities, or services to bicyclists; and non-monetary incentives. Neither 5 U.S.C. § 7905 nor Executive Order No. 13150 implementing the statute authorizes agencies to pay the parking of employees who use private vehicles to commute to work. In fact, the purpose of the program, as noted above, is to improve air quality and to reduce traffic congestion by encouraging employees to commute by other than single occupancy motor vehicles. Paying the parking fees of employees who use privately owned vehicles to commute might even encourage employees who presently use mass transit or vanpools to commute to switch to privately owned vehicles, frustrating the underlying purpose of the transit subsidy program. Accordingly, payment of the parking fees of employees with disabilities is not authorized under the government's transit subsidy program, because the transit subsidy programs itself creates no exception for disabilities—that is, the program serves a different purpose.

The second question is whether the Commission may pay the parking fees of employees with disabilities who commute to work using privately owned vehicles, rather than mass transit or vanpools, as a "reasonable accommodation" under the ADA.

The ADA does not apply to federal employers. 42 U.S.C. § 12111(5)(B)(i); B-266286, Oct. 11, 1996. However, under section 504 of the Rehabilitation Act of 1973, federal agencies are prohibited from discriminating against otherwise qualified individuals with disabilities. 29 U.S.C. § 794(a). For determining compliance with the Rehabilitation Act, 29 U.S.C. § 791, the ADA standards concerning equal employment

opportunities for individuals with disabilities have been adopted. 29 U.S.C. §§ 791(g), 794(d); 29 C.F.R. §§ 1614.203(b), 1630.1(a). Federal agencies are required to make reasonable accommodations to the known physical or mental limitations of otherwise qualified employees, unless the agency can show that the accommodation would impose an undue hardship on the operation of its program. 29 C.F.R. § 1630.9(a); B-243300, Sept. 17, 1991; B-240271, Oct. 15, 1990. A reasonable accommodation may include, but is not limited to: making the agency's facility readily accessible to individuals with disabilities, job restructuring, modified work schedules, acquisition or modification of equipment, provision of qualified readers or interpreters, and other similar accommodations. 29 C.F.R. § 1630.2(o)(2). Basically, agencies are required to gather sufficient information to determine what accommodations are necessary to enable employees with disabilities to perform their jobs. See B-266286, Oct. 11, 1996, and cases cited.

We have held that agencies acting under the authority of the Rehabilitation Act may properly expend appropriated funds to reasonably accommodate employees with disabilities. See 63 Comp. Gen. 115 (1983) (Equal Employment Opportunity Commission could expend public funds to acquire or modify equipment); 56 Comp. Gen. 398 (1977) (Social Security Administration could reimburse an employee with a disability for the cost of a motorized wheelchair where the agency violated standards under the Architectural Barriers Act and a non-powered wheelchair could not be used); 64 Comp. Gen. 30 (1984) (Internal Revenue Service could reimburse an employee with a disability the costs of shipping a specially equipped car to her new duty station); 56 Comp. Gen. 661 (1977) (travel and per diem expenses of attendant are necessary travel expenses incident to travel of an employee with a disability); B-240271, Oct. 15, 1990 (Internal Revenue Service could purchase a motorized wheelchair for use by an employee with a disability in performing official duties).

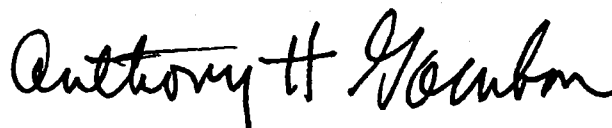
Notwithstanding the strong governmental commitment to facilitate employment of individuals with disabilities, the general rule still requires federal employees, even employees with severe disabilities, to pay for commercial parking since it is a personal expense. 63 Comp. Gen. 270 (1984). There is no indication that the employee who has asked the Commission to pay for parking is limited or disadvantaged in performing Commission work because of the disabling condition, and the Commission states that it does not believe that reasonable accommodations are necessary for any of its employees with disabilities since they are currently performing all necessary job duties and functions. Therefore, the Commission may not properly pay the parking fees out of appropriated funds as a reasonable accommodation pursuant to the Rehabilitation Act under the facts presented here.

However, the Rehabilitation Act also requires federal agencies to play a leadership role in promoting the employment of individuals with disabilities, especially individuals with significant disabilities, 29 U.S.C. § 791(b)(2), and to formulate and implement affirmative action plans for the hiring, placement, and advancement of individuals with disabilities. 29 U.S.C. § 791(b). The affirmative action plan must describe the methods whereby the special needs of employees with disabilities are

being met and provide assurances, procedures, and commitments for adequate hiring, placement, and advancement opportunities for individuals with disabilities. Id. We have recognized an exception to the general rule that parking fees may not be paid out of appropriated funds. In 63 Comp. Gen. 270, we determined that if an agency finds that an employee's severely disabling condition is the principal reason that he or she must pay parking costs more than a de minimis amount above the costs paid by employees without disabilities working at the same facility and able to park at less expensive facilities further away, and finds that paying the extra incremental parking fees for employees with severely disabling conditions will help it attract or retain employees with severe disabilities or will otherwise enhance its operational efficiency, then we would not object to the agency using its appropriated funds to pay the difference. In such circumstances, even absent specific statutory or regulatory authority, the government's commitment to employees with disabilities is sufficiently strong to allow an exception to the general rule requiring employees to pay for their own parking. Id. If such an option were not available, it could frustrate a federal agency's hiring and retention of employees with disabilities, 63 Comp. Gen. at 274, or significantly impair the operational efficiency of the agency. See 55 Comp. Gen. 1197 (1976).

CONCLUSION

The Commission may not pay the parking fees of employees with disabilities under the transit pass transportation fringe benefit program, nor may the Commission pay parking fees for an employee with disabilities as a reasonable accommodation under the facts presented here. However, under 63 Comp. Gen. 270 (1984), appropriated funds are available to pay some portion of parking fees of employees with disabilities. If the Commission determines that an employee's severely disabling condition is the principal reason that the employee must pay parking costs that are substantially more than those incurred by employees without disabilities working at the same facility and able to park at less expensive facilities further away, and finds that paying the extra incremental parking fees for employees with severely disabling conditions will help it to attract or retain employees with severe disabilities or will otherwise enhance its operational efficiency, then the Commission may pay the difference if it so chooses.



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