

Board of Contract Appeals
General Services Administration
Washington, D.C. 20405

September 19, 2002

GSBCA 15925-TRAV, 15926-TRAV, 15927-TRAV

In the Matters of TIM A. HAUGH, AL FLETCHER, and KIMBERN TURLEY

Tim A. Haugh, Juneau, AK, Claimant in GSBCA 15925-TRAV.

Al Fletcher, Juneau, AK, Claimant in GSBCA 15926-TRAV.

Kimbern Turley, Auke Bay, AK, Claimant in GSBCA 15927-TRAV.

James V. Lunetta, Chief, Finance Division, Federal Highway Administration,
Department of Transportation, Washington, DC, appearing for Department of Transportation.

DeGRAFF, Board Judge.

In 2001, these claimants were employed by the Department of Transportation (DoT) in Juneau, Alaska. Two of the claimants, accompanied by their spouses, went to Seattle, Washington, to obtain medical care that was not available to them in Juneau. The third claimant accompanied his spouse to Seattle and to Tucson, Arizona, so that she could obtain medical care that was not available in Juneau. Two of the claimants were recruited from outside Alaska and each signed a form that says DoT will furnish the employee and the employee's dependents located outside the continental United States with free emergency medical services by contract or otherwise and free emergency medical supplies, if DoT determines that furnishing such services and supplies is necessary. All three employees submitted claims for reimbursement of the transportation and lodging expenses they incurred in connection with their trips. DoT denied their claims because it could not find any authority for paying them. DoT then submitted the claims to us for review.

As DoT recognizes, it may use taxpayer dollars to fund the trips taken by the claimants only if a statute authorizes such an expenditure. Dwight G. Garretson, B-191190 (Feb. 13, 1980); Ralph C. Schialdone, B-168202 (Dec. 2, 1969). Although two of the claimants signed forms that say DoT will furnish free emergency medical services and supplies in some circumstances, a form alone cannot provide an agency with the authority to expend public funds. The issue, then, is whether there is a statute that authorizes DoT to provide emergency medical services to these claimants for free or to reimburse them for the expenses they

incurred when they traveled to obtain such services. As explained below, we found no such statute.

There are several statutes that provide agencies with the authority to reimburse employees for travel for medical purposes. For example, statutes provide that civilian employees of the Department of Defense and members of the Foreign Service assigned to duty stations abroad are eligible to be reimbursed for travel for medical purposes in certain circumstances. For purposes of these statutes, a duty station in Alaska is not considered to be a duty station abroad. 10 U.S.C. § 1599b (2000); 22 U.S.C. §§ 3902, 4081. Another statute provides that federal civilian employees who are performing travel for official Government business, and who must abandon their travel assignments due to illness or medical emergency, are eligible to be reimbursed for travel for medical purposes in some circumstances. 5 U.S.C. § 5702(b). In addition, a statute provides that the Department of Commerce can expend its funds to provide free emergency medical services and supplies to employees of the Department of Commerce and other federal agencies and their dependents in Alaska and other points outside the continental United States, when the Secretary of Commerce determines that providing such services is necessary. 15 U.S.C. § 1514. To the extent that these statutes provide DoT with any authority, they do not provide it with the authority to reimburse our three claimants because the claimants do not fall within any of the categories of employees covered by the statutes.

There is a statute that allows DoT to use its funds to provide for and to maintain emergency medical services and supplies for employees and their dependents who are stationed in remote places, when such items are necessary and not otherwise available. 49 U.S.C. § 331. Although the DoT statute is patterned quite closely after the Department of Commerce statute found at 15 U.S.C. § 1514, the DoT statute does not provide that DoT will make medical services available for free. Instead, the statute says that DoT "shall" make reasonable charges for emergency medical services and supplies, and then credit the amounts paid to the appropriation from which the expenditure was made. 49 U.S.C. § 331. According to the legislative history of amendments to this statute, it uses the term "shall" in the "mandatory and imperative sense." Pub. L. No. 97-449, 96 Stat. 2413 (1983), Detailed Explanation Prepared by the Office of the Law Revision Counsel, reprinted in 1982 U.S.C.C.A.N. 4220, 4221. Even if DoT decided to utilize this statute to provide medical services to our claimants, the statute would not allow DoT to make those services available for free.

In summary, we found no statutory authority that authorizes reimbursement of the expenses incurred by these claimants. Although it is possible that an appropriations act or other law of which we are unaware provides DoT with the authority to provide free emergency medical services or to reimburse employees for the expenses of travel incurred for medical purposes, DoT has not called any such law to our attention. In the absence of statutory authority to pay these claims, DoT correctly decided to deny them.

Board Judge