Text as published on gao.gov, https://www.gao.gov/products/b-192880, archived 2026-07-11. GAO published no original file for this decision. Rendered by Comptroller Desk.

B-192880 February 27, 1979

Number: B-192880

Date: 1979-02-27

B-192880 February 27, 1979

Stanley Q. Lyman Executive Vice President Federal Aviation Science and Technological Association 2139 Wisconsin Avenue, N.W. Washington, D.C. 20007

Dear Mr. Lyman:

By letter of September 12, 1978, you requested a decision concerning the claim of Mr. Stanley Tuhoski, a Federal Aviation Administration (FAA) Electronics Engineer, who believes he is entitled to reimbursement of legal fees in the amount of $35. He paid this amount to a private attorney to represent him in court on a traffic violation urge which arose from a motor vehicle accident occurring while he was driving a Government vehicle on official business of the FAA. The traffic violation charge was dropped after private counsel was obtained.

Mr. Tuhoski recalls that he contacted Mr. J. William Hacker, an attorney in the Office of the Regional Counsel, Great Lakes Region, LA, who informed him that he should retain private counsel and submit request for reimbursement through FAA's Voucher Section. Mr. Tuhoski '7a he was never told that FAA could not provide legal counsel or that it was unlikely FAA would pay the legal fees.

By letter of November 13, 1978, a copy of which you received, Mr. Hacker informed us that when contacted by Mr. Tuhoski concerning the traffic ticket he called the U.S. Attorney's Office in Toledo, Ohio. Since there were no apparent damages resulting from the accident, the U.S. Attorney's Office evidently decided that the time and expense of litigation would not be in the best interest of the Government Mr. Hacker informed Mr. Tuhoski that he might want to obtain private legal counsel if he wished to contest the traffic violation. Hacker states in his letter that he never told Mr. Tuhoski that FAA would pay private counsel fees or that it had authority to do so. But he did advise that Mr. Tuhoski could attempt to have FM pay by presenting a bill for the $35. That claim was subsequently denied by FAA for lack of authority to pay it.

We recently held in similar circumstances that the Bureau of Alcohol, Tobacco ant Firearms of the Department of the Treasury had no authority to authorize and pay for the services of a private attorney to represent an employee in defending against a traffic-violation charge. We ruled that such expenses are the personal responsibility of the employee. Only the Department of Justice may authorize and pay for a private attorney to represent an employee such situations, and then only if it determines that the employee was acting within the scope of his employment. B-186857 February 9, 1978 57 Comp. Gen. 270 (copy enclosed).

In 55 Comp. Gen. 408 (1975) (copy enclosed), mentioned in Hacker's letter, we observed that 5 U.S.C. Sec. 3106 prohibits the d of an executive department from hiring an attorney to litigate employee's case unless otherwise authorized by law. Further, that decision points out that the Department of Justice has comprehensive authority to supervise and control the conduct of such litigation under 28 U.S.C. Sec.(s). 515 to 519 and 547. In that case, the Small Business Administration was authorized to pay for a private attorney's services since it was an "Independent establishment" as distinct from "Executive department" and since the Department of Justice had initiated litigation to defend the employee in the interest of the United States.

Particularly because there is no showing that the Department of Justice decided that litigation would be in the Government's interest, there does not appear to be any authority to pay the attorney's fee. However, if Mr. Tuhoski wishes to pursue this matter, a claim may be filed with our Claims Division as specified in 4 C.F.R. Sec. 31.4.

Sincerely yours,

Robert L. Higgins Assistant General Counsel

Enclosures

cc: J. William Hacker, Esq. Office of the Regional Counsel Great Lakes Region Federal Aviation Administration Department of Transportation 2300 East Devon Avenue Des Plaines, Illinois 60018