Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Central Intelligence Agency--Meal Expenses For Security Detail

File: B-272985

Date: December 30, 1996

DIGEST

The Central Intelligence Agency may not use appropriated funds to pay all or part of the cost of meals purchased by members of the Director of Central Intelligence's security detail while providing 24-hour security to the Director or Deputy Director. Appropriated funds may not be used to provide subsistence or to purchase meals for federal employees while working at their normal duty station, even when working under unusual circumstances. Exceptions to this rule may be made only in extreme emergency situations involving danger to human life or destruction of federal property.

DECISION

The General Counsel of the Central Intelligence Agency (CIA) has asked whether the CIA may reimburse from appropriated funds members of the Director of Central Intelligence's security detail for meals purchased by them while on duty. For the reasons indicated below, we conclude that appropriated funds may not be used to pay for these meals.

BACKGROUND

According to the CIA, the security detail is responsible for providing 24-hour personal protection for the Director and Deputy Director of Central Intelligence. The duties of the security detail require that its members travel with the Director or Deputy Director to appointments and engagements and remain in line of sight of the official they are protecting. On occasion members of the detail must accompany one of the officials to restaurants in the Washington metropolitan area. To maintain line-of-sight contact with the official and not draw attention to themselves, members of the detail sit at a nearby table in the restaurant. Some restaurants require that members of the detail order meals while sitting at these tables. The cost of these meals, often substantial, has been borne by the individual members of the detail.

The CIA suggests that because the meals for the security detail would not be purchased but for the need to provide protection to the Director or Deputy Director, the government rather than security detail members should pay the cost of the meals.

DISCUSSION

Section 5536, of title 5, United States Code, provides that no employee of the government may receive any pay or allowances in addition to that provided by statute "unless specifically authorized by law." Because of this prohibition, without specific statutory authority, the government may not pay subsistence expenses in addition to an employee's regular compensation, or furnish free food to civilian employees at headquarters even if the employees are working under unusual circumstances. E.g., B-234813, November 9, 1989; 42 Comp. Gen. 149 (1962).

There are numerous examples in which the Congress has overridden the restriction in 5 U.S.C. § 5536 to specifically authorize agencies to pay for employees' meals. E.g., 5 U.S.C. § 5536a (subsistence and travel expenses authorized for law enforcement personnel and their families when their lives are threatened). There is no applicable statute in this case. Even where there is no specific statutory authority, we have not objected to the purchase of meals for employees working in unanticipated emergency situations involving danger to human life or destruction of federal property. B-232487, January 26, 1989; 53 Comp. Gen. 71 (1973). As we recognized in 53 Comp. Gen. 71, this is a narrow exception:

> ". . . whether payment of such expenses would be proper in similar cases that may arise in the future would necessarily depend on the facts and circumstances present in each case, having in mind that work in occupations such as those of policemen, firemen, security guards, etc., often is required to be performed under emergent and dangerous conditions and that fact alone does not warrant departure from the general rule against payment for employees' meals from appropriated funds."

53 Comp. Gen. at 75. Here, the CIA concedes that members of the security detail may not receive meals at government expense under the emergency exception because they are not faced with extreme life threatening emergencies.

We addressed an almost identical situation in B-202104, July 2, 1981. In that case the Department of the Treasury asked whether it could reimburse Secret Service agents all or part of the cost of meals they were required to purchase while providing 24-hour protection to public officials. We concluded that the Department could not use its appropriated funds for that purpose:

> "We do not find the usual 24-hour-a-day protective service satisfies the extreme emergency situation involving danger to human life criterion that is necessary to fit within the exception to the rule. And under the rule the increased cost of food due to unusual working conditions is not a sufficient reason by itself to pay for the costs of meals out of appropriated funds. . . .
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> "Accordingly, payment of an allowance to the Secret Service agents for meals during their 24-hour-a-day protective service at headquarters may not be made from the Department of the Treasury's appropriations. Further, purchase of meals for these agents while they are required to stay in high cost hotels during 24-hour-a-day protective assignments is not authorized . . . ."

The CIA asks that we create another exception to the requirement for specific statutory authority to permit payment for meals out of appropriated funds when the members of the security detail purchase the meals in order to carry out their assigned duties. The agency suggests that it is fundamentally unfair to require members of the detail to purchase meals at their own expense when the only reason they purchase the meals is to carry out their task of guarding the Director or Deputy Director. The CIA asks that we view the costs of the meals (and presumably any other increased expenses incurred by members of the security detail in the discharge of their duties) as necessary expenses of the agency's overall operations because guarding the Director and Deputy Director is clearly an authorized function of the CIA.

We understand that the cost of purchasing meals may be a hardship for members of the detail. There are, however, many unusual situations in which federal employers must bear expenses as a result of their employment, including the purchase of more expensive meals than they would otherwise buy. E.g., B-204104, July 2, 1981; B-194798, January 23, 1980. While we have not objected to the use of appropriated funds for meals in some emergency situations, the situation presented by the CIA provides no basis for avoiding the statutory scheme. To the extent the hardship of purchasing meals interferes with the CIA's ability to recruit and retain qualified staff for security details, it should seek specific statutory authority to permit it to buy meals for its employees.

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