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

August 6, 2001

GSBCA 15527-RELO

In the Matter of KENNETH R. GOULD

Kenneth R. Gould, Bend, OR, Claimant.

Tamara L. Hanan, Director, Financial Resources, Intermountain Region, United States Forest Service, Ogden, UT, appearing for Department of Agriculture

**NEILL,** Board Judge.

Claimant, Mr. Kenneth R. Gould, a former employee of the United States Forest Service, asks that we review his former agency's denial of his claims for reimbursement of certain relocation expenses. The agency refused to pay the claims on the ground that they are tainted by fraud. Based on the record before us, with one minor exception, we affirm the agency's denial of Mr. Gould's claims.

## Background

On May 21, 1999, Mr. Gould, a civil engineer formerly employed by the Forest Service, accepted a transfer from the Dixie National Forest in Cedar City, Utah, to the Uinta National Forest in Provo, Utah. By letter dated June 11, his reassignment to Uinta National Forest was confirmed with an effective date of July 4. Mr. Gould was given verbal travel authorization on June 14 so that he could leave on a househunting trip without further delay. His formal authorization was processed on June 23. It provided for a one-way move with estimated dates of travel at some time between June 16 thru July 6. He was also authorized to move his household goods up to a maximum of 16,000 pounds. The method of payment was said to be "actual" and not "commuted [rate]." No en route per diem was authorized for the move because, according to the agency, the distance between Mr. Gould's old and new official stations was less than three hundred miles. Mr. Gould was also authorized reimbursement of temporary quarters subsistence expenses (TQSE) for thirty days.

In a statement of fact submitted to the Board by letter dated May 23, 2001, Mr. Gould explains that he did not receive a travel authorization, other than a verbal approval, prior to his actual move. He made a statement to the same effect in his initial letter to the Board when he explained that he did not receive a copy of his travel authorization or any informational material on transfer of station moves until after his actual move. Nevertheless, in what was said to be a copy of his initial submission to the Board, which Mr. Gould

furnished to his agency, he included a chronological summary of facts. Among these facts is the statement that on the afternoon of the day he left his residence in Cedar City, he received a copy of his travel authorization (Form AD-202) and an agency booklet on transfer of station. He adds that he did not have an opportunity to review the booklet.[1]

Mr. Gould's move did not go well. Claimant contends that the regional coordinator for transfers of station (TOS) delayed in arranging for a mover notwithstanding his repeated reminders. Mr. Gould writes that on June 22 he again contacted the coordinator to determine if she had called a mover. He states that she replied she had not. In answer to his question of whether he could call the mover himself, she is reputed to have said he could not because it was her responsibility to do so. Mr. Gould states that he again reminded the coordinator that little time remained before his planned moving date. He writes:

> I also asked her about moving myself or having my brother-in-law's uncle move me. She said I would have to get a certified weight ticket, and that the amount to be reimbursed would have to be less than the AD-202 [travel authorization] estimate.

On or about June 28, Mr. Gould again spoke with the regional TOS coordinator. His recollection is that she advised him at the time that he would be contacted shortly by a mover. He states that he then explained to her that, in view of his plans to move on June 30, it was clear that no mover could pack, move, and unpack his belongings in new temporary quarters within the time that remained. He, therefore, advised the coordinator that he had already made arrangements to move himself.

On June 30, Mr. Gould went to his office and then returned home to start packing of his household goods in three pick-up trucks and one rented truck. He had already determined during the previous weekend that his brother-in-law's uncle would be unable to assist him. Finding that he did not have sufficient room to move all of his goods, he arranged to store some in a friend's garage. Mr. Gould states that he finished packing at approximately 9 p.m. on June 30. Being too tired to make the drive to his new duty station that evening, Mr. Gould arranged for two rooms at a local motel (for himself, his spouse, their two children, and for his mother-in-law and father-in-law). The following day, July 1, he and his family drove with their household goods to their new duty station.

With the assistance of the TOS coordinator, Mr. Gould prepared and submitted various vouchers for reimbursement of relocation expenses. The agency informs us that he received payments or was given a credit against his travel advance of $7,500 for the following: $818.18 for his househunting trip, $638.80 for his one-way move, $2,483.29 for

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[1]A copy of this chronological summary prepared by Mr. Gould has been provided for the record by his agency. When this case was docketed, the Board, in accordance with its practice, provided the agency with a copy of Mr Gould's initial submission. Upon receipt of this package, the agency's representative compared it to a purported copy of the same which she had already received directly from Mr. Gould. Noting that the attachments in the two sets of documents were not identical, the agency representative later furnished the Board with a complete copy of what she had previously received from Mr. Gould.

his house purchase, and $104.78 for a claim for relocation income tax allowance. Two other claims, however, have not fared well. It is the agency's denial of these claims which Mr. Gould now asks us to review.

The first claim is for $12,401.64. Of this amount, $8,400.72 was said to represent the cost of shipping household goods and $4,500.92 has been claimed as TQSE. Included in this TQSE claim is a request for reimbursement of $2,475.17 for meals. The voucher for these claims is dated September 17, 1999. The agency's finance center declined to pay the shipping cost in the absence of a paid invoice. As for the subsistence expenses, the center likewise declined to pay these. The $2,475.17 sought for meals was deemed to be excessive. Mr. Gould was asked to provide clarification. In response, he provided what he claimed to be a paid invoice for shipping his household goods. His explanation regarding the $2,475.17 claimed for meals was that his family does not like fast food and other restaurants were not cheap. He also noted that often the groceries which were bought were not consumed. He explained that the majority of the time the family took its meals out rather than at home owing to the time constraints imposed by his new job and the need to find permanent housing.

Mr. Gould's claim for $12,401.64 was never paid by the agency. On investigation it was determined that the paid invoice for alleged shipping costs was falsified and that a lease provided in an effort to prove the validity of claimed lodging costs was likewise falsified. Copies of checks allegedly written to cover lodging expenses were also found to be falsified. Following an investigation by the office of the agency's inspector general (OIG), an information was filed against Mr. Gould on June 7, 2000. It alleged that his claim of September 17, 1999, was false, fictitious and fraudulent in that it requested payment of monies to the defendant for expenses he had not incurred and in amounts greater than his actual expenses, as he well knew -- all in violation of 18 U.S.C. § 287. On December 4, 2000, Mr. Gould entered a plea of guilty to this charge.

By letter dated December 17, 2000, Mr. Gould submitted a claim for $24,110.15. Mr. Gould contends that he purged from this claim all elements of falsity contained in his initial claim. The first part of this claim amounts to a total of $4,801.41 in salary for pay period fourteen and a lump sum payment for leave which was withheld from Mr. Gould on the occasion of his resigning from the agency in July 2000. The funds in question were withheld in partial satisfaction of the travel advance made to him for his move but never entirely liquidated. His claim also sought a total of $2,745.82 for TQSE and $16,410.30 for the packing, shipment and storage of household goods under the commuted rate method of payment. Finally, Mr. Gould also sought to be paid for additional costs incurred during his move to Provo. This included $146.38 which he paid for the two motel rooms he rented in Cedar City on June 30 before leaving for Provo and $3.57 to which he claimed he was entitled for additional mileage.[2]

[2]Although Mr. Gould contends that all of these claims come to a total of $24,110.15, we find instead that they total $24,107.48.

By letter dated January 29, 2001, Mr. Gould's agency formally denied both his claim of September 17, 1999, and his claim of December 17, 2000.

## Discussion

We turn first to Mr. Gould's claim of September 17, 1999. It consists of a claim for the costs of moving his household goods and a claim for thirty days of TQSE. By his own admission, both claims are fraudulent. The agency obviously acted properly in denying them.

What, however, of Mr. Gould's submission of December 17, 2000? The first portion of the claim, which demands that the agency return amounts withheld in satisfaction of an unpaid travel advance, is not a matter which we have the authority to resolve. By statute, the Administrator of General Services is authorized to settle claims involving expenses incurred by Federal civilian employees for official travel and transportation, and for relocation expenses incident to transfers of official duty stations. 31 U.S.C. § 3702(a)(3) (Supp. V 1999). By delegation from the Administrator, this Board is authorized to exercise that authority. While the amount involved in any administrative offset which an agency may make against a claimant may be affected by determinations we may make on disputed relocation or travel claims, we have no authority to settle any dispute which may arise between the claimant and his agency regarding the offsets themselves. We, therefore, make no comment on this aspect of Mr. Gould's claim.

As to Mr. Gould's revised claim for the cost of shipping his household goods, he contends that it is now free of any taint of fraud and should, therefore, be paid. The agency, however, refuses to pay. In refusing to do so, it relies on guidance provided in similar cases by the General Accounting Office (GAO), our predecessor in settling claims of this nature. Under section 2514 of title twenty-eight of the United States Code, a claim against the United States shall be forfeited to the United States by any person who corruptly practices or attempts to practice any fraud against the United States in the proof, statement, establishment, or allowance thereof. While this statute relates to claims before the United States Court of Federal Claims, the GAO consistently held that, in view of this statute, for it to allow payment of a claim thought to be fraudulent would be improper. If fraud were reasonably suspected, the claim would obviously be of doubtful validity and the claimant, therefore, should be left to pursue his or her remedy in the Court of Federal Claims. To the Secretary of Defense, 41 Comp. Gen. 285 (1961). The principle is a sound one and we choose to follow it.

In the instant case, Mr. Gould, in his claim of December 17, 2000, presents what is purported to be a corrected claim for the cost of shipping his household goods. It is based upon the assumption that he was authorized reimbursement pursuant to the commuted rate. This assumption is unsupported by the actual travel authorization which the claimant now admits he received before leaving Cedar Creek but chose not to review. The claimant refers us to a statement in the OIG report that he was authorized a commuted rate move. Such a statement does appear in the report. Nevertheless, we give it no credence. It is unsupported by evidence elsewhere in the record. It is in patent conflict with the travel authorization itself. It also is in conflict with Mr. Gould's own description of frustrating discussions with

the TOS coordinator who, prior to Mr. Gould's departure from Cedar City, was intent on personally arranging for a mover to transport the claimant's household goods.

In any event, Mr. Gould now admits that he attempted to support his initial claim for the cost of shipping his household goods with a bogus invoice. If he elects to pursue this "corrected" version of his claim in the Court of Federal Claims, he will undoubtedly be met with a Government response that his right to this claim has been forfeited pursuant to 28 U.S.C. § 2514. Accordingly, the agency has acted properly in preserving this defense for the Government by its continual refusal to pay even Mr. Gould's revised claim for shipment of his household goods.

Mr. Gould's revised TQSE claim has likewise been rejected by the agency. He contends that the lodging costs in his TQSE claim of December 17, 2000, are the actual costs and are no longer tainted by fraud. The agency, however, for the same reason as given with regard to the revised claim for the cost of moving household goods, refuses to pay any portion of the claim. We agree with the agency that the claim should not be paid. Although allegedly only the lodging portion of the original TQSE claim was supported by fraudulent documentation, the agency nonetheless refuses to pay the food and incidental expense portion of the revised claim as well. The agency invokes the "tainted day rule" as its reason for not doing so. In this case, we find the agency's reliance on the rule, which we discuss below, to be well placed.

Under the tainted day rule, which was first articulated by GAO, a fraudulent claim for reimbursement for any part of a single day's subsistence expenses is said to taint with fraud the entire day's subsistence expenses. Clyde L. Brown, B-206543 (Sept. 8, 1982). The rationale behind the rule deserves a word of explanation. A fundamental issue raised with regard to fraud in a particular claim is the degree to which that fraud may taint a claimant's other requests for payment. The common sense rule followed by GAO has traditionally been that each separate item, i.e. one for which the employee can make a claim independently of other entitlements, stands on its own and is not tainted by the presence of fraud in another item which may appear in the same voucher or request for payment. E.g., Department of the Air Force, 57 Comp. Gen. 664 (1978). In the case of claims for per diem or for TQSE, the amount sought for each day is looked upon as a separate item, but the various components of the claim for that specific day are not considered separate items since they share a common statutory and regulatory basis for entitlement. Accordingly, pursuant to the tainted day rule, a fraudulent claim for lodging will effectively taint a claim for all other per diem or subsistence benefits for that day. See 59 Comp. Gen. 99 (1979).

In Mr. Gould's case, the lodging portion for all thirty days of his subsistence claim contained falsified charges. Consequently, the agency contends that, under the tainted day rule, any claim for food or incidental expenses is necessarily tainted for each day of his TQSE claim and the subsequent revision of that claim to eliminate any fraudulent representations does not nullify the prior forfeiture of that claim pursuant to 28 U.S.C. § 2514. We agree with the agency's application of the rule and the rationale developed by the GAO in support of the rule.

Claimant argues that the agency's reliance on the tainted day rule is misplaced and that the rule was abolished by GAO in 1991. We disagree. It is true that, in a decision issued in

that year, GAO modified the tainted day rule in recognition of the distinction between fraudulent claimants and fraudulent payees. Based upon an analysis of case law under the False Claims Act, and the fact that the Program Fraud Civil Remedies Act by then provided an administrative remedy for small-dollar cases, GAO concluded that the tainted day rule should no longer be applied in assessing liability against fraudulent *payees*. Instead, it concluded: "In the future, such rule shall apply only when deciding how much of a partially fraudulent travel voucher should be paid." 70 Comp. Gen. 463, 468 (1991). The record confirms that the two claims before us here have not been paid. Mr. Gould, therefore, is a fraudulent *claimant* and not a fraudulent *payee* and the agency's application of the tainted day rule to him is appropriate.

Our approval of the agency's reliance on the tainted day rule and consequent refusal to pay for claimant's food and incidental expenses should not be viewed as in conflict with our approval in other cases of partial payment of subsistence claims. For example, on occasion, we have approved an agency's decision not to reimburse a claimant for meals but to pay him for lodging costs. Michael L. Morgan, GSBCA 13646-RELO, 97-2 BCA ¶ 29,018; Luther R. Dixon, GSBCA 13694-RELO, 97-1 BCA ¶ 28,947. These subsistence claims for meals, however, were not looked upon as fraudulent. There is a great difference between a claimant's inability to provide supporting documentation and a deliberate effort to mislead a paying office through the submission of falsified documentation. In the latter case, an agency is unquestionably justified in invoking the tainted day rule provided there is reasonable suspicion of fraud supported by evidence "sufficient to overcome the usual presumption of honesty and fair dealing on the part of the claimant." Department of the Air Force, 57 Comp. Gen. at 668 (citing B-187975, July 28, 1977).

Mr. Gould also included in his submission of December 17, 2000, a claim of $146.38 for overnight lodging in Cedar City on the night of June 30, 1999. While this claim is not allowable as a per diem claim in view of the short distance Mr. Gould and his family planned to travel, it could conceivably be considered as a claim for temporary quarters for the day in question. The agency, however, contends that, even if viewed in this fashion, the claim is tainted with fraud. The OIG report notes that the explanation initially provided by the claimant for why he was required to rent two adjoining rooms was that his family was composed of four members but each of the motel rooms had only one queen size bed. Upon visiting the motel, the agency investigator determined that the rooms which were rented by Mr. Gould were not adjoining but on different floors. In addition, the agent determined that each room had two queen size beds rather than one. Mr. Gould contends that he made no false statement regarding his claim for lodging. The record indicates otherwise. We agree with the agency that this finding in the OIG report is sufficient to support a reasonable suspicion of fraud justifying denial of this claim.

One last element of Mr. Gould's submission of December 17, 2000, is a claim of $3.57 for additional mileage. On arrival at his new duty station, Mr. Gould submitted a claim for his one-way move. He states that he entered the figure of 223 miles on his claim as the distance traveled from his residence in Cedar City to his temporary quarters in Lehi, Utah. He alleges, however, that the TOS coordinator, who was assisting him to prepare this claim, changed this figure to 202 miles because, according to Rand McNally, that is the distance between Cedar City and Provo, Utah. Mr. Gould was paid based upon the lower figure.

Mr. Gould later complained to the agency that the distance between the two cities was not 202 miles but 210. No claim, however, was submitted for the additional eight miles. Instead, in his submission of December 17, 2000, Mr. Gould submitted a claim for twenty-one additional miles -- the difference between the 202 miles for which he was paid and the 223 miles he claims to have traveled from his old residence to his new temporary quarters. In answering Mr. Gould's claim of December 17, 2000, the agency indicated a willingness to reimburse him for up to 210 miles. In its report to us on this case, the agency simply states that it will defer to our judgment on the matter.

Mr. Gould is correct when he states that, with regard to certain relocation benefits based upon the distance between an employee's old and new official station or post of duty, the employee's residence may be substituted for the actual station or post of duty. See 41CFR 302-1.4 (k) (1999). In support of his claim to be reimbursed for an additional twenty-one miles, Mr. Gould has provided us with a mileage map downloaded from the internet which shows that the shortest route between Cedar City and Lehi is 220.8 miles. We find that this supports payment for nineteen of the twenty-one additional miles claimed. Using the twenty-cent-per-mile rate appearing in the agency's correspondence, we find that Mr. Gould is entitled to $3.80 (19 x .20) for the additional mileage.

With the exception of Mr. Gould's claim for additional mileage, we affirm the agency's denial of Mr. Gould's claims of September 17, 1999, and December 17, 2000 and agree that, with regard to his other relocation claims, he should be left solely to his remedy in the Court of Federal Claims.

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EDWIN B. NEILL
Board Judge