



## Decision

**Matter of:** U.S. Department of the Navy, Naval Sea Systems Command, Southwest Regional Maintenance Center—Application of the *Bona Fide* Needs Statute to Temporary Duty (TDY) Travel Orders

**File:** B-335838

**Date:** April 30, 2024

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### DIGEST

Certifying officers from the U.S. Department of the Navy (Navy), Naval Sea Systems Command, Southwest Regional Maintenance Center (SWRMC), approved 178 travel orders for active-duty service members to perform temporary duty (TDY) travel in fiscal year (FY) 2023. SWRMC obligated an FY 2023 appropriation for the approved travel orders. In FY 2024, Navy directed the certifying officers to modify the travel orders to include additional costs.

Travel, including TDY travel, is a *bona fide* need of the year in which the travel takes place. The travel at issue here occurred in FY 2023 and therefore was a *bona fide* need of FY 2023. Increases to these travel costs constitute an antecedent liability, which should be charged to the FY 2023 appropriation initially charged for the travel. If there is insufficient budget authority to cover these costs, Navy must report an Antideficiency Act violation.

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### DECISION

This responds to a request for a decision from the Southwest Regional Maintenance Center (SWRMC) regarding whether an expired fiscal year (FY) 2023 appropriation may be charged for additional travel costs resulting from an FY 2024 modification to approved travel orders for travel that occurred in FY 2023.<sup>1</sup>

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<sup>1</sup> Letter from Certifying Officers, SWRMC, to Comptroller General (Dec. 11, 2023) (Request Letter), at 1.

In accordance with our regular practice,<sup>2</sup> we contacted the U.S. Department of the Navy (Navy) to seek factual information and its legal views on this matter.<sup>3</sup> Navy provided a written response explaining the pertinent facts and its legal views.<sup>4</sup> We also sought additional information from the requesting certifying officers clarifying their views.<sup>5</sup>

## BACKGROUND

Military travelers sent on temporary duty (TDY) travel receive per diem allowances for meals that vary depending upon several factors, including whether the traveler is a service member or a civilian employee, the location of the travel, and the number of government-provided meals available to them.<sup>6</sup> In November 2022, SWRMC active-duty service members were sent on TDY travel to Singapore to support the Maintenance Execution Team (MET), which was performing preventative maintenance on ships located at the Changi Naval Base.<sup>7</sup> The travel orders for these travelers authorized a lower per diem allowance for meals than what MET leadership believed was authorized by the Joint Travel Regulations (JTR),<sup>8</sup> which sets travel policy and allowances for uniformed service members.<sup>9</sup>

MET leadership sought a legal opinion on the authorized per diem allowance for these travelers from the Office of the Chief of Naval Operations (OPNAV) Military

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<sup>2</sup> GAO, *GAO's Protocols for Legal Decisions and Opinions*, GAO-24-107329 (Washington, D.C.: Feb. 2024), available at <https://www.gao.gov/products/gao-24-107329>.

<sup>3</sup> Letter from Assistant General Counsel, GAO, to Assistant General Counsel, Financial Management and Comptroller, U.S. Department of the Navy (Jan. 25, 2024).

<sup>4</sup> Letter from Assistant General Counsel, Financial Management and Comptroller, U.S. Department of the Navy, to Assistant General Counsel, GAO (Feb. 22, 2024) (Navy Response Letter).

<sup>5</sup> Email from Assistant General Counsel, GAO, to Certifying Officers, SWRMC, *Subject: RE: Advanced [sic] Decision Request* (Jan. 9, 2024).

<sup>6</sup> Request Letter, Attachment 4 at 2-33.

<sup>7</sup> Navy Response Letter, at 1.

<sup>8</sup> Request Letter, Attachment 6 at 2.

<sup>9</sup> Defense Travel Management Office, *Joint Travel Regulations*, available at <https://www.travel.dod.mil/Policy-Regulations/Joint-Travel-Regulations/> (last visited Apr. 11, 2024).

Compensation Policy.<sup>10</sup> Based on JTR, OPNAV concluded that the military travelers should have received a higher per diem meal allowance.<sup>11</sup>

Following the OPNAV opinion, Navy directed SWRMC to modify the 178 travel orders authorized during FY 2023 so that the travelers would receive the higher per diem meal allowance.<sup>12</sup> Certifying officers requested a decision from GAO regarding whether the cost increase resulting from modified travel orders could be charged to the expired FY 2023 appropriation, which funded the initial travel costs.<sup>13</sup>

## DISCUSSION

At issue here is whether SWRMC may charge an expired FY 2023 appropriation for additional travel costs resulting from an FY 2024 modification to travel orders for travel that occurred in FY 2023.

A time-limited appropriation may only be obligated to meet a legitimate, *bona fide* need of the fiscal year for which the appropriation was made. 31 U.S.C. § 1502(a). What constitutes a *bona fide* need of a fiscal year depends largely on the facts and circumstances of a particular case. 70 Comp. Gen. 469 (1991). GAO has held that TDY travel is a *bona fide* need of the year in which the travel occurs. *Id.* For example, we considered what fiscal year should be charged for TDY travel that spans more than one fiscal year. *Id.* We concluded that the expenses of TDY travel should be charged to whatever fiscal year appropriation is current at the time travel occurs. *Id.* However, tickets for round trip transportation may be charged against the appropriation current at the time the employee embarks on TDY travel, even though the employee will not use the second portion of the ticket until the following fiscal year. 26 Comp. Gen. 961 (1947).

Here, the travel orders were issued and approved in FY 2023, and the travel took place in FY 2023.<sup>14</sup> Because the travel occurred in FY 2023, it constituted a need of FY 2023. Therefore, SWRMC complied with the *bona fide* needs statute when it obligated FY 2023 funds for the travel costs.<sup>15</sup>

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<sup>10</sup> Request Letter, Attachment 6 at 1.

<sup>11</sup> *Id.* at 18.

<sup>12</sup> Request Letter, at 1.

<sup>13</sup> *Id.* at 1, 5.

<sup>14</sup> Navy Response Letter, at 1.

<sup>15</sup> We note that Navy reported it records obligations for travel at the time travel orders are issued. *Id.* at 2-3. GAO has held that the recording statute, 31 U.S.C. § 1501(a)(7), requires an agency to record an obligation for travel when the travel is performed or when a ticket is purchased for the travel. 70 Comp. Gen. 469.

Next, we consider whether the modification of a travel order in a subsequent fiscal year is a *bona fide* need of the year in which the order is modified or the year in which the travel took place.

We have long held that a modification that falls within the general scope of a contract that results in an upward price adjustment is a *bona fide* need of the year in which the contract was originally executed. B-332430, Sept. 28, 2021. This is because the government's liability arises under the original contract and constitutes an "antecedent liability." *Id.* Antecedent liabilities should be charged to the same appropriation that funded the underlying contract, rather than appropriations available at the time of modification. *Id.*

Though the liabilities at issue here are not created by contract, similar principles apply. Where government employees perform official travel, a liability arises for the government to pay for the travel when it occurs, so the travel constitutes a *bona fide* need of that year. See 70 Comp. Gen. 469 (1991). Where it is later determined there are additional costs associated with the travel, these costs relate back to an antecedent liability associated with the travel. Accordingly, the increased costs should be charged to the appropriation that originally funded the travel.

Here, active-duty service members performed official travel in FY 2023, and SWRMC incurred a liability for that travel with an FY 2023 appropriation. In FY 2024, Navy determined that the costs for the travel had increased. Because the increased costs are associated with travel that occurred in FY 2023, SWRMC must charge the costs to the expired FY 2023 appropriation.<sup>16</sup>

## CONCLUSION

Increased costs associated with travel that occurred in FY 2023 must be charged to the expired FY 2023 appropriation that was initially charged for the travel. If Navy has insufficient budget authority available to make the adjustment, it must report an Antideficiency Act violation.



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<sup>16</sup> Although these funds have expired, they remain available for five fiscal years for recording, adjusting, and liquidating obligations properly chargeable to the appropriation account. 31 U.S.C. § 1553(a).