



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

August 19, 2016

CBCA 5248-TRAV

In the Matter of EMILY A. VUXTON

Emily A. Vuxton, Alexandria, VA, Claimant.

Anne M. Schmitt-Shoemaker, Deputy Director, Finance Center, United States Army Corps of Engineers, Millington, TN, appearing for Department of the Army.

RUSSELL, Board Judge.

Claimant, Emily A. Vuxton, a civilian employee of the United States Army Corps of Engineers (USACE or agency), has asked the Board to review the agency's determination that she must return \$100 from a travel reimbursement related to her attendance at a conference because the amount represents a membership fee that, by regulation, cannot be paid by the agency. For reasons stated below, we conclude that the fee is reimbursable.

Background

The agency approved temporary duty for claimant to travel to New Orleans, Louisiana, in October 2015 to attend the National Coastal Conference sponsored by the American Shore and Beach Preservation Association (ASBPA). Following the conference, claimant requested and received reimbursement for travel-related expenses. Among the claimed expenses, Ms. Vuxton was reimbursed \$475 for a registration fee associated with attending the conference. The USACE's Finance Center Audit Support Office subsequently audited Ms. Vuxton's travel reimbursement and, by letter dated March 15, 2015, the office informed Ms. Vuxton that the reimbursement should have been only \$375. The office determined that \$100 of the amount paid represented a membership fee to the ASBPA that

was not reimbursable. The agency demanded that Ms. Vuxton return this amount to the agency.

On March 18, 2016, Ms. Vuxton filed a claim with the Board contesting the USACE's determination. In support of her claim, Ms. Vuxton included a letter, dated March 17, 2016, from Mr. Ken Gooderham, Managing Director of the ASBPA. Mr. Gooderham explained that the fee for the October 2015 conference did not include any unnecessary or avoidable expenses, and was used to cover costs in preparing for and executing the conference. According to Mr. Gooderham, the "fee covered costs incurred in (a) preparing conference sessions, (b) developing conference information and handouts, (c) providing the conference facility, (d) executing the conference itself, and (e) [preparing] post-conference technical proceedings which [were] emailed to attendees." Mr. Gooderham added that "item (d)" was "also termed 'ASBPA annual membership,' which consists of the Shore and Beach and 'Coastal Voice' e-newsletter documentation of findings from the conference."

In his March 17, 2016, letter, Mr. Gooderham also explained the difference in the fee for members and non-members. He stated that the ASBPA "consistently charge[s] non-ASBPA members a higher conference registration (with the difference attributed to membership in recognition of the ongoing support) both to recognize the financial backing necessary over the course of a year to execute [its] conference and as an incentive for people to maintain their annual membership." Mr. Gooderham added that "[i]f someone is not a current ASBPA member, they must pay the higher fee in order to participate in the conference and have access to its presentations and materials because the difference in fees (identified as 'membership') is essential to presenting the ASBPA conferences and distributing necessary materials." According to the conference program, registration fees varied depending on when they were paid and whether a registrant was an ASBPA member. The fee for registrants who paid on or prior to September 11, 2015, was \$375 for ASBPA members and \$475 for non-members. The program notes that the fee for non-members includes association membership for the following year.

Discussion

The Joint Travel Regulations (JTR) provide that Department of Defense civilian employees may attend and participate in conferences and meetings of recognized professional organizations to maintain and improve professional competency at the Government's expense. JTR app. R, pt. 2, ¶ A. Employees may be reimbursed for conference registration fees when authorized in a travel order or approved on a travel claim. *Id.* ¶ E.1.

Agencies are generally prohibited from using appropriated funds to pay for an individual employee's membership fee in a society or association. *See* 5 U.S.C. § 5946 (2012). An agency may, however, pay a membership fee to an organization if the membership is in the Government's best interest to do so, and the membership is in the agency's name. JTR app. R, pt. 2, ¶ F.

The Government Employees Training Act, which is understood to be an exception to the general prohibition in 5 U.S.C. § 5946, authorizes agencies to use their appropriations to pay employee travel expenses to "meetings which are concerned with the functions or activities for which the appropriation is made or which will contribute to improved conduct, supervision, or management of the functions or activities."¹ 5 U.S.C. § 4110; *Travel Expenses-Honor Awards*, 55 Comp. Gen. 1332 (1976); Government Accountability Office, *Principles of Federal Appropriations Law*, vol. 1 at 4-39 (3d ed. 2004) (the scope of 5 U.S.C. § 5946 is considerably reduced by virtue of the broad authority of the Government Employees Training Act). Accordingly, an agency may pay a membership fee if the membership is part of an employee training program pursuant to 5 U.S.C. § 4110. *Linda A. Rose*, B-198720 (June 23, 1980). After review of the submissions of both Ms. Vuxton and the agency, the Board concludes that the agency did not reimburse Ms. Vuxton for any impermissible membership fee which she must return to the agency.

Here, it is apparent that the USACE authorized and paid Ms. Vuxton's conference-related expenses because the conference "concerned" the agency's functions or activities. *See* 5 U.S.C. § 4110. Accordingly, consistent with 5 U.S.C. § 4110, Ms. Vuxton should not have to reimburse the agency for any portion of the registration fee. *Linda A. Rose*. This is particularly so because the amount at issue was an unavoidable and necessary expense to attend the conference.

Further, the agency presumed that the \$100 differential charged by the ASBPA for non-members of the organization to attend the conference was exclusively for the privilege of affiliation. However, the record does not support that presumption. According to the ASBPA, the cost associated with the "membership fee" is allocated to presenting the annual conference, preparing post-conference technical proceedings, and distributing necessary materials. In previous decisions, the Comptroller General has "not objected to certain expenditures just because they were labeled as memberships in associations," recognizing that the Government was actually paying for something else, that is, a service or use charge

¹ Under statutes discussed herein, "the term 'meeting' includes other designations such as conference, congress, convention, seminar, symposium, and workshop; what the particular gathering is called is irrelevant." *Principles of Federal Appropriations Law*, vol. 1 at 4-39.

in furtherance of an authorized agency activity. *Defense Medical Systems Support Center-Health & Fitness Program*, 70 Comp. Gen. 190 (1991). Similarly, here, based on Mr. Gooderham's representation, the USACE's payment to the ASBPA was used to cover the costs of conference-related activities, not exclusively for the benefit of affiliation.

Decision

For reasons stated above, the claim is granted.

BEVERLY M. RUSSELL
Board Judge