



UNITED STATES GOVERNMENT
National Labor Relations Board
Office of Inspector General

Memorandum

April 27, 2006

To: Richard A. Siegel
Associate General Counsel

Karl E. Rohrbaugh
Finance Branch Chief

From: Jane E. Altenhofen
Inspector General

Subject: Inspection Report No. OIG-INS-42-06-02: Witness Fees

We initiated this inspection in February 2006 to evaluate the National Labor Relations Board's (NLRB or Agency) processes for paying fees and travel costs to witnesses. Witness claims were generally paid within 90 days of the appearance before the Board. Approximately 9 percent of the Fiscal Year (FY) 2005 obligations had been unliquidated for more than 90 days as of September 30, 2005, and were still unliquidated as of March 24, 2006. Witnesses were paid for mileage claims that were significantly greater than the direct route.

SCOPE

We reviewed laws and regulations related to payments for witness fees and witness travel. We reviewed Agency policies, including Chapter FIN-5 of the Administrative Policies and Procedures Manual, Witness Fees and Travel Allowances, dated September 9, 2005. We interviewed staff in the Division of Operations-Management (Operations-Management) and the Finance Branch (Finance) about the processes for approving and paying fees and travel costs for witnesses. We selected a random sample of 30 obligations for FY 2005 payments of witness fees and travel, which resulted in 154 claims, and determined whether the identified procedures were followed and the amounts paid to witnesses were correct. Obligations are made by case and may include multiple witnesses. We compared the payments for witness fees and witness travel to the amounts obligated and determined the amount of obligations still outstanding as of March 20, 2006.

We conducted this review from February through April 2006. This review was done in accordance with the Quality Standards for Inspections issued by the President's Council on Integrity and Efficiency.

BACKGROUND

Federal statutes provide that a witness in attendance at any court shall be paid a \$40 fee for each day's attendance, including time necessarily occupied in going to and returning from the place of attendance. The witness is also eligible for a mileage allowance for use of a privately owned vehicle, transportation fees such as tolls, and a subsistence allowance if an overnight stay is required. The National Labor Relations Act applies this requirement to witnesses summoned before the NLRB.

Witnesses subpoenaed by a Board agent are to be advised that they are entitled to the attendance fee and reimbursement for travel expenses and should be provided with a copy of the Form NLRB-5494(E), Claims for Witness Attendance Fees, Travel, and Miscellaneous Expenses (Witness Claim Form). After appearing at the proceeding, the witness should promptly complete and sign a Witness Claim Form. The Board agent is responsible for approving the Witness Claim Form. Thereafter, staff in the Regional Offices review the forms and submit the claims to Finance for processing and payment.

During FY 2005, the Agency obligated approximately \$64,000 in witness fees and \$53,000 for witness travel. Obligations are recorded based on the estimated number of witnesses or on actual claims received after a hearing. About \$15,000 in witness fees and \$10,000 for witness travel was not paid by the end of FY 2005.

RESULTS

Obligations

Claims for witness fees and witness travel were generally processed shortly after the witness appearance. For obligations in our sample, 89 percent of the payments were made within 90 days of the witness' appearance before the Agency. The remaining 11 percent occurred between 91 and 180 days of the witness' appearance. All payments were within 90 days of the funds being obligated.

The Agency does not review obligations of witness and related travel fees during the fiscal year in which they relate, resulting in the Agency losing the use of funds that could have been deobligated. The payment history relating to these obligations indicate that funds could be deobligated 90 days after the obligation is made.

As of March 24, 2006, 126 FY 2005 obligations for witness fees and witness travel had unliquidated amounts remaining, totaling \$20,460. About \$10,877 (53 percent) of this amount was outstanding longer than 90 days at the end of FY 2005, representing approximately 9 percent of the FY 2005 obligations for witness fees and witness travel.

Finance stated that they review and deobligate outstanding funds for witness fees and witness travel during April of the subsequent fiscal year. Finance informs the Regional Offices

with unliquidated witness claims that the funds will be deobligated unless the Regional Office states a reason that the witness claim should be left open. The Finance Chief said that this allows for the cleanup of the accounting records. Deobligations after the expiration of the fiscal year are unavailable for new obligations, but are available to pay claims from that fiscal year. The Finance Chief stated that he is currently performing this review and anticipates that all the FY 2005 unliquidated witness claims will be deobligated.

Payments

Witness Claim Forms were generally calculated correctly. Errors found in a limited number of claims included providing full meal and incidental expense allowances on the first and last days of eligibility instead of the allowed 75 percent, not providing witness fees while in travel status, incorrect mileage reimbursement rates, and mathematical errors. Also, some claims were not supported by subpoenas and some were not certified by the Board agent. A significant number of claims, however, contained inflated mileage reimbursement amounts.

The Federal Travel Regulations require that mileage for use of a privately owned vehicle be determined by the use of a standard highway mileage guide or by the actual miles driven as shown from odometer readings. The regulations generally require travelers to travel to their destination by usually traveled routes. Reimbursement is limited to the cost of travel by a direct route or on an uninterrupted basis, and the traveler is responsible for any additional costs.

Thirteen of the 110 Witness Claim Forms with a mileage reimbursement claimed greater than the amount calculated as the direct route by more than 20 miles, an amount that we consider significant. The 13 instances included mileage that was overclaimed by approximately 580 miles, resulting in an overpayment of \$225.65. We did not include a suggestion for the Agency to recover these overpayments, in part, because the Agency does not have regulations that provide a debtor appeal and resolution process. We identified this condition in our *Review of Agency Procedures for the Collection of Non-tax Delinquent Debt*, OIG-INS-17-02-01, issued on February 13, 2002.

Operations-Management stated that the Regional Office staff verify the mathematical accuracy of the witness' claim, but do not verify the reasonableness of the amount claimed for mileage. Finance also stated that they do not verify the mileage claim.

SUGGESTIONS

We suggest that the Finance Chief coordinate with the Operations-Management Associate General Counsel to:

1. Pursue methods that would allow deobligation of witness and travel fees during the fiscal year in which the obligation occurs.
2. Remind Regional Offices that they should review mileage claims for reasonableness as part of approving the Witness Claim Forms.

Management Response

The Finance Chief disagreed with our suggestion to review witness fee claims during the fiscal year in which the obligation occurred because these claims are based on a witness appearance and therefore are legitimate obligations. He noted that the funds cannot be deobligated and reused because Finance cannot determine which witnesses will not submit a claim. The Finance Chief also disagreed with our conclusions regarding witness mileage claims. He stated that justifiable reasons for claims being higher than we concluded may exist and that Finance would be unaware of these reasons when performing the review.

The Operations-Management Associate General Counsel stated that he would be in favor of a thorough consideration of both suggestions. Before proceeding with initiatives related to the review of witness fee obligations, he wanted to consult with Regional Directors for their views regarding the impact on casehandling.

We revised both suggestions to address these concerns.