Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: John Wessels

File: B-265874

Date: May 22, 1996

DIGEST

Generally, where an agency promptly notifies an employee of an overpayment, the employee is precluded from relying on the accuracy of the payment to his detriment and waiver is not appropriate since collection of the payment would not be against equity and good conscience despite the absence of fault on the part of the employee. In this case the agency notified employee within 3 weeks of the error. Moreover, employee had notice prior to submitting his voucher that the original travel orders were erroneous. Waiver is denied.

DECISION

The Chief, Travel Division, Defense Finance and Accounting Service (DFAS), requests reconsideration of our settlement certificate Z-2942616-050, July 28, 1995, which denied the waiver request of Mr. John Wessels. For the reasons stated hereafter, we affirm our denial of the waiver request.

BACKGROUND

On January 27, 1994, Mr. Wessels was issued travel orders authorizing a permanent change of station move from Kentwood, Michigan, to Buffalo, New York. In connection with his move, Mr. Wessels was authorized the shipment and storage of his household goods. While the orders did not indicate the method of shipment, the estimated cost shown on the orders is based on the commuted rate. Mr. Wessels states that he was told by his regional personnel office that he would be reimbursed shipment of household goods under the commuted rate method. Mr. Wessels shipped his household goods on June 30, 1994, choosing to ship them himself; his actual expenses were $924.75.

Mr. Wessels' orders were amended on July 1, 1994, to limit the shipment of his household goods to his actual expenses, not to exceed the cost by government bill of lading (GBL). He received the amended orders on July 6 or 7. Mr. Wessels submitted his travel voucher on July 9, 1994, seeking reimbursement for $4,988.62 under the commuted rate.

In mid-September 1994, DFAS reimbursed him $4,988.62 under the commuted rate believing it was unable to retroactively modify his orders merely to limit reimbursement. In early October 1994, DFAS determined that Mr. Wessels' orders were properly amended to limit his reimbursement to his actual expenses, based on the conclusion that the failure to conduct a cost comparison at the time the orders were issued justified a retroactive modification of the orders. DFAS concluded Mr. Wessels had received $4,063.87 in excess of his proper entitlement; he then requested waiver of this amount.

We denied the waiver request on the basis that, for a waiver of an erroneous travel advance to be appropriate, it must first be shown that the employee spent the amount erroneously paid in reliance on the erroneous orders. DFAS requests reconsideration stating that this case does not involve an erroneous travel advance, but instead is an instance of an erroneous payment of travel entitlements where the requirement that the erroneously paid amount actually be spent does not apply. While DFAS is correct on this point, we deny the waiver on other grounds.

ANALYSIS AND CONCLUSION

Title 5 U.S.C. § 5584 (1995) provides authority for the waiver of a claim of the United States against a person which arises out of an erroneous payment of pay and allowances including travel, transportation, and relocation expenses and allowances. Waiver is permitted only when the collection of the claim would be against equity and good conscience, and not in the best interest of the United States. In this case, Mr. Wessels' original travel orders were silent as to the method of shipment for the household goods. The Joint Travel Regulations (JTR), Vol. 2, Para. C8001-4c(3), amended October 1, 1990, include a mandatory policy that a cost comparison be made between the cost of shipment by the GBL method and by the commuted rate method. Under the regulations, the more economical method will be used if the cost difference exceeds $100. A cost comparison was not performed before issuance of Mr. Wessels' original orders. This omission required modification of the travel orders to specify the shipment method authorized. See Steven B. Wirth, B-249337, May 6, 1993. The result of the cost comparison identified GBL as the least expensive method of shipment. The reimbursement of $4,988.62 under the commuted rate after the cost comparison was made and the orders amended was an erroneous payment.

Mr. Wessels was reimbursed $4,988.62 when his actual receipted expenses totalled $924.75. The difference of $4,063.87 may be considered for waiver under 5 U.S.C. § 5584 (1995).

We have held that where an agency's prompt notification of an overpayment to an employee precludes him from relying on the accuracy of the payment to his detriment, waiver is not appropriate since collection of the payment would not be

against equity and good conscience despite the absence of fault on the part of the employee. See Richard C. Clough, 68 Comp. Gen. 326 (1989). In this case the agency notified Mr. Wessels within 3 weeks of the error. Moreover, he had notice prior to submitting his voucher that the original travel orders authorizing the commuted rate were erroneous.

Accordingly, we affirm our denial of Mr. Wessels' waiver request.

/s/Seymour Efros
for Robert P. Murphy
General Counsel