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PLM-1  
Mr. Pool

**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

FILE: B-197121

DATE: January 23, 1980

MATTER OF: Alfred E. Gent (Waiver of erroneous overpayment of travel and relocation expenses)

DIGEST: Employee of National Oceanic and Atmospheric Administration (NOAA) was erroneously authorized and reimbursed for travel and relocation expenses instead of travel and transportation expenses as new appointee to manpower shortage position. Employee must repay amounts erroneously paid since overpayment of travel and relocation expenses may not be waived under 5 U.S.C. § 5584; there is no basis for compromise or termination of collection action under Federal Claims Collective Act; and Government cannot be bound beyond actual authority conferred upon its agents by statutes or regulations.

Mr. Alfred E. Gent /Edward Gent/ appeals the findings of our Claims Division in connection with its review of the claim of the United States against him for erroneous overpayment of certain travel and relocation expenses incident to his selection for a manpower shortage position in the National Oceanic and Atmospheric Administration (NOAA) in 1977.

*ABC 68*

The facts in this case are not in dispute and in lieu of repeating the comprehensive presentation contained in our Claims Division's settlement letter of October 22, 1979, the following brief statement is offered. Mr. Gent, formerly a student residing in Oxford, Mississippi, was appointed to a position in the manpower shortage category and began work August 29, 1977, with the National Weather Service in Sterling, Virginia. The travel order prepared incident to relocation to his first duty station erroneously included allowances which may be authorized only for continuing employees involved in transfers from one duty station to another. As a result Mr. Gent received travel and relocation expenses instead of travel and transportation expenses as a new appointee to a manpower shortage position. Our Claims Division reviewed Mr. Gent's liability for the erroneous overpayments in the amount of \$2,244.65 and determined that the Government's claim against Mr. Gent was computed in accordance with the applicable law and there was no basis for reducing the liability.

*ABC 117*

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*Debt collection  
Government liability (legal)  
Personal liability (legal)  
Administrative errors  
Relocations  
Overpayments  
Expense claim  
Travel allowances*

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Mr. Gent has not alleged any error of fact or law in the adjudication of his claim by our Claims Division. Rather his present appeal is a request for waiver of the erroneous overpayment on the basis of equity and good conscience. In short, Mr. Gent urges that since the additional expenses in question were authorized in writing and, relying on such authorization, he incurred the expenses in good faith, the Government should not require him to pay for the additional expenses.

Appointees to manpower shortage positions are entitled to travel and transportation expenses from their places of residence at time of selection or assignment to their duty station in accordance with 5 U.S.C. § 5723 (1976), which provides for reimbursement of the travel expenses of the appointee and payment of the transportation expenses of his immediate family and of his household goods and personal effects to the extent authorized in 5 U.S.C. § 5724 (1976). No other expenses are authorized in section 5723. Implementing regulations covering travel and transportation allowances of shortage category appointees are set forth in Federal Travel Regulations (FTR) (FPMR 101-7)(May 1973) in para. 2-1.5f. Para. 2-1.5f(4) expressly prohibits the reimbursement of residence sale and purchase expenses, subsistence while occupying temporary quarters, miscellaneous expense allowance, and per diem for family. Under the applicable statutes, and in view of the regulations which clearly state the statutory limitation, Mr. Gent was erroneously overpaid travel and relocation expenses in the total amount of \$2,244.65. See Karl D. Simecka, April 3, 1979, and cases cited therein; see also Stephen C. Ehrmann and Robert Fullilove, B-194032, June 19, 1979.

The erroneous overpayment in the amount of \$2,244.65, constitutes a valid debt which Mr. Gent owes to the United States. Recovery of this debt is required unless there exist qualifying criteria for waiver of the debt under the provisions of 5 U.S.C. § 5584 (1976), or grounds for compromise or termination of the collection by the NOAA under the authority provided in 31 U.S.C. § 952(b) (1976). Michael W. Matura, B-195471, October 26, 1979.

Certain claims of the United States involving erroneous payments may be waived under the following provisions of 5 U.S.C. § 5584:

"§ 5584. Claims for overpayment of pay and allowances, other than travel and transportation expenses and allowances and relocation expenses

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"(a) A claim of the United States against a person arising out of an erroneous payment of pay or allowances, other than travel and transportation expenses and allowances and relocation expenses payable under section 5724a of this title, on or after July 1, 1960, to an employee of an agency, the collection of which would be against equity and good conscience and not in the best interests of the United States, may be waived in whole or in part by—

"(1) The Comptroller General of the United States; or

"(2) the head of the agency when—

"(A) the claim is in an amount aggregating not more than \$500;"  
(Emphasis added.)

The exercise of such statutory authority by the Comptroller General or the head of the agency is specifically precluded in Mr. Gent's case because the overpayment in question involved "relocation expenses payable under section 5724a" of title 5 of the United States Code. See also 4 C.F.R. § 91.2(c) (1970). Therefore, notwithstanding equitable considerations that might be involved, there is no legal authority upon which Mr. Gent's debt may be waived. Michael W. Matura, supra.

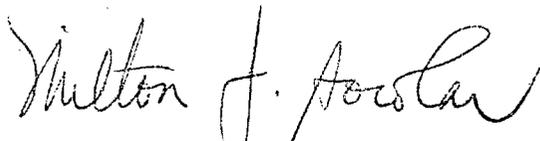
In addition, under section 952(b) of the Federal Claims Collection Act of 1966, 31 U.S.C. 951, et. seq., the head of an agency is authorized to compromise a claim or to terminate or suspend collection action under certain prescribed conditions. However, where there is a present or prospective ability to pay on the debt, such as Mr. Gent's continued employment, collection must be attempted. Robert F. Granico, B-189701, September 23, 1977. This is especially true in Mr. Gent's case where he is employed by the Government and the overpayment may be collected by administrative setoff of future monies due him pursuant to 5 U.S.C. § 5514 (1976). See also 4 C.F.R. § 102.3 (1979). Michael W. Matura, supra.

It is unfortunate that Mr. Gent as a shortage category employee was erroneously authorized allowances which are statutorily conferred only upon transferred employees, and that he was erroneously advised that he would be entitled to reimbursement for his travel and

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relocation expenses which were not properly allowable to him under applicable laws and regulations. However, it is a well-settled rule of law that the Government cannot be bound beyond the actual authority conferred upon its agents by statute or by regulations, and this is so even though the agent may have been unaware of the limitations on his authority. James A. Shultz, B-195167, October 12, 1979, 59 Comp. Gen. —, and decisions cited therein.

Accordingly, the determination of our Claims Division is sustained, the overpayment to Mr. Gent may not be waived, nor reduced, and payments to him in excess of his authorized statutory entitlement should be recovered.

A handwritten signature in cursive script, reading "Milton F. Fowler".

For The Comptroller General  
of the United States