

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

26762

FILE: B-208064**DATE:** November 15, 1983**MATTER OF:** Lissa A. Martinez - Training - Service Requirement - Waiver of Training Costs - Reconsideration**DIGEST:**

1. Employee requests reconsideration of Lissa A. Martinez, B-208064, January 25, 1983, which held that the agency may not refund the amount previously collected from claimant upon reemployment since the debt had been extinguished, the Government made whole, and no right to recovery remained. Upon reconsideration, and based upon clarifying information furnished, the amount of \$1,698.21 received by the agency from the employee's retirement fund, subsequent to her reemployment and execution of a "continuing 13-month service agreement," may be refunded to her. Agency is deemed to have waived its right of recovery of this amount since collection had not been effected at time of reemployment and execution of agreement. Prior decision is modified accordingly.
2. Amount of \$725.56 owed on training indebtedness which was offset against salary and leave payments due employee at time of resignation, must be paid by agency into miscellaneous receipts account of U.S. Treasury unless agency has statutory authority to retain the funds. Since collection has been effected, the transaction is closed and the funds collected are not available for refund to employee. Lissa A. Martinez, B-208064, January 25, 1983, is modified accordingly.

This decision is in response to a request by Ms. Lissa A. Martinez, an employee of the Maritime Administration, for review and reconsideration of our decision, Lissa A. Martinez, B-208064, January 25, 1983. That decision denied her request for refund of training expenses in the amount of \$2,423.77.

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Based upon clarifying information furnished by the agency, and for the reasons hereafter stated, the \$1,698.21 received by the Maritime Administration subsequent to the reemployment of Ms. Martinez, may be refunded to her. The remaining \$725.56, representing salary and lump-sum leave payments due Ms. Martinez at the time of her resignation, which was offset by the agency against her total training indebtedness, may not be refunded to her.

In our prior decision, we stated that Ms. Martinez agreed to serve the Maritime Administration for 36 months after the completion of her training period at the Massachusetts Institute of Technology. She then breached the agreement and paid the debt of \$2,423.77 for the uncompleted portion of her obligation. After 8 months, she was rehired by the agency and signed a continuing service agreement for the 13 months remaining on her original service obligation. We concluded that the debt between Ms. Martinez and the Maritime Administration had been extinguished and that the new agreement did not extend the debt or renew it. Hence, the request for a refund was denied. See 5 U.S.C. § 4108 (1976).

In her request for reconsideration, Ms. Martinez states that her reason for resigning from the Maritime Administration in August 1981 was her strong interest in maritime environmental science and engineering for which she had been trained and the absence of any vacancies in the agency's environmental office. Then, in January 1982, when a vacancy was advertised in the environmental office, she applied and the job was offered to her. On March 1, 1982, she notified the Maritime Administration personnel office by letter that she would accept the new position, contingent upon the agency reimbursing her the money they had collected at the time of her resignation in August 1981. The personnel office verbally responded in the affirmative and agreed to prepare a "continuing 13-month service agreement." Ms. Martinez reported for duty on April 5, 1982, and signed the continuing service agreement. She states that she entered into the agreement in good faith with the expectation that the agency would maintain its side of the agreement.

In responding to the request by Ms. Martinez for reconsideration of our earlier decision, we obtained additional, clarifying information from the agency and we find and conclude as follows: The total cost of the training received by Ms. Martinez was \$6,712. She was given credit for the time that she worked at the Maritime Administration

following the completion of the training program. The remaining training indebtedness owed by Ms. Martinez at the time of her resignation was \$2,423.77. The amount of \$725.56, representing salary and lump-sum leave payments, was offset by the agency against the indebtedness of \$2,423.77, and retained in the agency's appropriation for operations and training. At the point in the time when the agency actually collects, recovers, or offsets the amount of the training costs owed the Government, the debt is thereby extinguished, the Government is made whole, the transaction is closed, and the funds collected are not available for refund to the employee. 51 Comp. Gen. 419 (1972); 40 id. 162 (1960). Compare A-27376, March 12, 1930, where no actual recovery or offset tantamount to recovery had been accomplished, there being only a tentative withholding pending a decision as to waiver of the indebtedness. Therefore, as to the \$725.56, there is no authority to refund this portion of the training debt. We affirm our prior decision as to that amount.

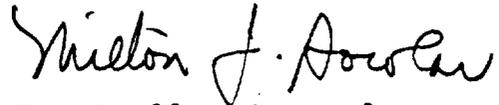
However, with respect to the remaining \$1,698.21 owed on the training indebtedness, the certifying officer has clarified that, at the time Ms. Martinez was reemployed by the Maritime Administration and reported for duty on April 5, 1982, the agency had not yet received payment from OPM of that amount from Ms. Martinez's retirement fund. It was not received by the agency until May 4, 1982.

Section 4108(c) of Title 5, United States Code, provides that the head of the agency concerned may waive a right of recovery of a training indebtedness, in whole or part, if it is shown that the recovery would be against equity and good conscience or against the public interest. See 5 C.F.R. § 410.509(b)(1) (1981). We regard the action by the Maritime Administration in preparing, acquiescing in, and executing the "continuing 13-month service agreement" as constituting a waiver of its right of recovery of the \$1,698.21, the collection of which had not been effected at the time Ms. Martinez was reemployed and the agreement was executed. On the other hand, the sum of \$725.56, representing salary and leave which was offset against the training debt, is not subject to waiver since to constitute a valid waiver, there must be a right or privilege to be waived. Since this portion of the training debt had been extinguished by offset, no right of recovery remained. Compare 5 U.S.C. § 5584(c) concerning overpayments of pay and providing specific authority with respect to waivers involving amounts previously refunded by the employee. The refund

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authority with respect to indebtednesses arising under the training act is not so extensive. 51 Comp. Gen. 419, 422, cited above.

The Maritime Administration is therefore authorized to refund to Ms. Martinez the amount of \$1,698.21. However, the sum of \$725.56, representing the salary and leave payments due Ms. Martinez at the time of her resignation, which was offset against her training indebtedness, may not be refunded to her. Moreover, that sum must be transferred to the Treasury as miscellaneous receipts unless the Maritime Administration has statutory authority to retain the funds. Our decision, Lissa A. Martinez, B-208064, January 25, 1983, is modified accordingly.



Acting Comptroller General
of the United States