



Comptroller General
of the United States

45:2410

Washington, D.C. 20548

Decision

Matter of: Tyrone Carsten
File: B-248943.2
Date: October 24, 1994

DIGEST

Employee seeks waiver of erroneous payments for temporary quarters expenses where he was not reasonably aware of a requirement to vacate residence at his old duty station and where he helped to fulfill his agency's needs by remaining temporarily at his old duty station and covering both his old duty station position and his new duty station position, as needed by the agency. The payments were erroneous because agency officials knew he was working at both places and had not moved his residence. Waiver is granted.

DECISION

Mr. Tyrone Carsten requests waiver of two erroneous payments of temporary quarters subsistence expenses (TQSE) pursuant to 5 U.S.C. § 5584 (1988 and Supp. III 1991). For the following reasons, we grant waiver.

BACKGROUND

In our previous decision, Tyrone Carsten, B-248943, Oct. 2, 1992, we denied Mr. Carsten's claims for TQSE since he did not vacate his residence at his former duty station in Durango, Colorado, until sometime after the Department of Health and Human Services (HHS) had transferred him to Cortez, Colorado, in the interest of the government. The decision noted, however, that the two TQSE payments may be considered for waiver under 5 U.S.C. § 5584 (1988 and Supp. III 1991).

The record shows that Mr. Carsten had been transferred from Tyler, Texas, to Durango, Colorado, in March 1991 in the interest of the government. He rented an apartment in Durango and was authorized and paid 60 days TQSE incident to that transfer. Then, on September 30, 1991, HHS issued travel orders transferring Mr. Carsten from Durango, Colorado, to Cortez, Colorado, in the interest of the government. The effective date of this second transfer (duty reporting date) was November 4, 1991, and HHS authorized .-

to receive TQSE for this transfer pursuant to the Federal Travel Regulation, 41 C.F.R. Part 302-5 (1991).

Because his second transfer occurred so soon after his first transfer, Mr. Carsten had still not sold his permanent residence in Tyler, Texas, and still lived in a rented apartment in Durango, Colorado. Furthermore, after November 4, 1991, and with the knowledge and permission of both his former supervisor in Durango and his current supervisor in Cortez, Mr. Carsten worked approximately 3 days a week in Cortez and 2-1/2 days a week in Durango due to the workload and employee shortages in an effort to fulfill HHS's needs.

In connection with this second transfer, HHS paid Mr. Carsten \$1,592.80 for TQSE on or about December 12, 1991, even though his voucher showed that he was still living in Durango.¹ At about the same time, HHS also advanced Mr. Carsten \$1,500 for the second 30-day period of TQSE.² According to the HHS report on this matter, Mr. Carsten filed a voucher for this second 30-day period on or about February 6, 1992, showing that he had expended \$1,692 for that period of TQSE.

After Mr. Carsten filed his second voucher in February 1992, the HHS Management and Budget Office discovered that Mr. Carsten had not vacated the residence in which he was living at the time he was notified of his transfer from Durango to Cortez. Rather, he remained living in Durango and commuted from there to Cortez in accordance with HHS's needs, as noted above. Based on this discovery, HHS collected back \$3,092.80 (\$1,592.80 for the paid voucher and \$1,500 for the travel advance) by deducting that amount from other legitimate travel and relocation claims.³

Mr. Carsten states that he was not aware that he was required to move from Durango to Cortez in order to be eligible for TQSE. He points out that he helped to fulfill HHS's needs by staying in Durango and covering both the HHS office in Durango and the HHS office in Cortez. He considered himself to be in temporary quarters since he was on a month by month rental and his furniture remained in storage.

¹This payment covered the first 30 days of TQSE from November 3 to December 2, 1991.

²This advance was intended to cover the period from December 3, 1991, to January 2, 1992.

³Since Mr. Carsten has repaid the government, we treat his request for waiver as an application for a refund in accordance with 4 C.F.R. § 92.6(a) (1994).

He was continuing to make house payments while trying to sell his former residence. Also, the HHS report on this matter specifically found that there is no evidence which would indicate fraud, misrepresentation, fault, or lack of good faith on Mr. Carsten's part.

OPINION

Waiver of claims for erroneous payments of travel or relocation allowances may be granted under 5 U.S.C. § 5584 (1988 and Supp. III 1991), when collection would be against equity and good conscience and not in the best interests of the United States, unless there is an indication of fraud, misrepresentation, fault, or lack of good faith on the employee's part. The issues in this case are whether the payments were "erroneous," and whether Mr. Carsten can be said to be at "fault" in this matter as that term is used in the statute. The standard employed by this Office is to determine whether a reasonable person should have been aware that he was receiving a payment to which he was not entitled. See Dolores Gutowsky, B-238580, May 10, 1981, and decisions cited therein.

The agency position is that no erroneous payment occurred because the travel orders properly authorized TQSE and because the voucher payment and the advance were made without knowledge that Mr. Carsten had not moved.

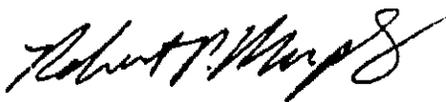
In regard to the payment of TQSE on or about December 12, 1991, we note that although Mr. Carsten's voucher showed that he was still living in Durango, nevertheless HHS still paid it. Moreover, HHS admits that the Acting Branch Manager approved the travel voucher without adequate knowledge of the travel regulations. The same analysis applies to the travel advance for the second thirty days which was paid at the same time. Thus, we find that the two payments were erroneous.

In regard to the first erroneous payment of \$1,592.80 for TQSE, we note that Mr. Carsten states that he was not aware that he was receiving a payment to which he was not entitled, and the HHS Report found that he was not at fault in this matter. Furthermore, with the knowledge and permission of both his former supervisor in Durango and his current supervisor in Cortez, he worked approximately 3 days a week in Cortez and 2-1/2 days a week in Durango due to the workload and employee shortages in an effort to fulfill HHS's needs. Thus, we conclude that Mr. Carsten was not reasonably aware that he was receiving a payment to which he was not entitled, and we grant waiver of the first erroneous payment of \$1,592.80. See Dolores Gutowsky, B-238580, May 10, 1991.

In regard to the second transaction, the advance of \$1,500 which occurred at approximately the same time as the first payment, we have held that a travel advance for TQSE is subject to waiver under the standards discussed above, if it was made to cover expenses erroneously authorized, and the employee actually spent the advance in reliance on the erroneous travel order. Major Kenneth M. Dieter, 67 Comp. Gen. 496 (1988); Rajindar N. Khanna, 67 Comp. Gen. 493 (1988). Furthermore, as a general rule, we presume that an employee who incurs expenses erroneously authorized by travel orders has done so in reliance on those orders. See Mary E. Lopez, B-236856, Dec. 15, 1989, and decisions cited therein.

We find that Mr. Carsten actually expended \$1,692 for the second 30-day period of TQSE in reliance on the travel advance and that he was likewise not at fault with respect to this erroneous payment. Thus, under the standards set forth above, we grant waiver of the erroneous payment of the travel advance which HHS made to Mr. Carsten. See Dolores Gutowsky, B-238580, May 10, 1991, and 4 C.F.R. § 91.4(d) (1994).

Accordingly, we grant waiver in the total amount of \$3,092.80.⁴


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Acting General Counsel

⁴Since Mr. Carsten has repaid the government, HHS should refund him the amount of \$3,092.80 in accordance with 4 C.F.R. § 92.6(a) (1994). See footnote 3 above. The additional \$192 which Mr. Carsten spent for his second 30-day period of TQSE is not recoverable from the government.