



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Nancy Bottomlee—Waiver—Temporary Quarters Subsistence Expenses

File: B-260850

Date: September 26, 1995

DIGEST

Employee appeals partial denial of waiver of erroneous payments for temporary quarters subsistence (TQSE) expenses where she was incorrectly told by the agency that she had up to 2 years to begin the entitlement. Relying on this information, she delayed occupancy of temporary quarters, entered into a lease agreement, paid rents due, and was later told by the agency that she was ineligible for TQSE because she did not begin occupancy within 30 days of reporting for duty. Based on additional evidence, we waive repayment of that portion of the erroneous payment which represents funds she actually expended in reliance on the erroneous authorization prior to notification of error.

DECISION

This decision is in response to correspondence from Ms. Nancy J. Bottomlee, who is appealing from our claims settlement Z-2927948, February 17, 1995, which granted partial waiver of her debt incident to an overpayment of temporary quarters subsistence expenses (TQSE). Repayment of an additional portion of her TQSE is granted for the following reasons.

BACKGROUND

Ms. Bottomlee, a civilian employee of the Navy, accepted a position with the Air Force at Eglin Air Force Base, Florida, during a reduction in force at Pensacola Naval Air Station, Florida. She was informed by the Relocation Coordinator, Human Resources Office in Pensacola, that she was authorized TQSE and had up to 2 years to request the entitlement. Based on this information, beginning February 7, 1994, Ms. Bottomlee commuted daily to her new duty station until her house was sold in June 1994. She then began to occupy temporary quarters on June 22, 1994, at Eglin. On July 27, 1994, in a telephone conversation and in a July 28, 1994, letter, she was notified by the Navy that occupancy of temporary quarters should have started no later than 30 days from the date she reported for duty. Consequently,

the Navy determined that she was ineligible to receive TQSE, that she had been erroneously paid TQSE, and that she must repay the full amount of the overpayment; \$3,455.59.

Ms. Bottomlee sought a waiver of her indebtedness, and the Air Force recommended waiver of \$2,648.43, representing the TQSE and withholding tax allowance overpayments received by Ms. Bottomlee during the period of June 22 through July 28, 1994, and denied waiver of \$807.16, representing the payments received by Ms. Bottomlee after she became aware of the possible error on July 27, 1994. Our claims settlement agreed with the Air Force recommendation. Ms. Bottomlee appeals that decision.

In her appeal, Ms. Bottomlee argues that all of her moving decisions were based on the incorrect guidance she received from the agency. She has provided additional evidence of her reliance on the erroneous agency authorization; namely a copy of a 60-day lease she entered into on June 21, 1994. She states that all rents were paid prior to her receiving agency notification of error. Consequently, it is her view that all overpayments should be waived.

OPINION

Section 5584 of title 5, United States Code, provides authority for waiving claims for erroneous payments of pay and certain allowances made to federal employees, if collection of the claim would be against equity and good conscience and not in the best interests of the United States. Generally, these criteria are met by a finding that the claim arose from administrative error with no indication of fraud, fault, misrepresentation, or lack of good faith on the part of the employee or other person having an interest in obtaining waiver. In this case, the agency determined that the overpayments were initiated by an administrative error by the agency, and there is no indication in the record that the error was caused by fraud, misrepresentation, fault or lack of good faith.

We have held that an employee who accepts payments after notice that they may be erroneous cannot reasonably expect to be able to retain them and should make provision for eventual repayment.¹ We have also held that when an employee is assured by the proper official that payments are allowed, and the employee reasonably relies on such assurance in good faith, waiver, in a proper case, may be granted.²

¹Ronald L. Porcella, B-255591, Aug. 10, 1994, and decisions cited.

²Mary F. Lopez, B-236856, Dec. 15, 1989; William F. Shea, B-243327, Sept. 16, 1991.

In Ms. Bottomlee's case, the record indicates that she received notice of possible error from the agency on July 27, 1994, by telephone, and on July 28, 1994, by agency letter. However, the additional documentation provided by Ms. Bottomlee shows that she entered into a 60-day lease on June 21, 1994, in reliance on the erroneous authorization previously provided by the agency. According to the provisions of the lease, her final rental payment was paid on July 21, 1994; thus, she paid all rental expenses prior to agency notification of error.

For this reason, we find that the collection of the part of the overpayment used to meet the lease obligation would be against equity and good conscience and not in the best interest of the United States. Accordingly, we find that Ms. Bottomlee actually expended \$575.00 during this period of TQSE in reliance on the previous erroneous authorization. Thus, under the standards set forth above, we grant waiver of the erroneous payment used to pay the rental expenses actually prepaid by Ms. Bottomlee during the period of July 29 through August 20, 1994, totaling \$575.00. We deny waiver of the remaining \$232.16 erroneously paid to Ms. Bottomlee for the same period because she expended that amount after receiving notice of error and should have reasonably expected to return this amount to the government.

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