

DECISION

DIGEST - L - CP *Released*
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

724

FILE: B-195471

DATE: October 26, 1979

MATTER OF: - Overpayment of
real estate expenses

DIGEST: Notwithstanding employee's contention that it would be against equity and good conscience to require repayment, there is no legal authority to waive indebtedness resulting from an erroneous overpayment of real estate expenses in view of the specific provisions of 5 U.S.C. § 5584. And, in the circumstances presented, there is no basis for compromise or termination of collection action pursuant to Federal Claims Collection Act, 31 U.S.C. § 951, et seq. (1976).

Mr. _____, a civilian employee of the Department of the Army, requests reconsideration of his claim concerning his indebtedness resulting from an overpayment of real estate expenses which resulted from his purchase of a home incident to an official change of duty station in July 1976. Because the particular items of expense--a finance charge and an owner's title insurance premium--are not reimbursable under the applicable regulations, Mr. _____ claim was disallowed by our Claims Division on May 18, 1979.

The basis of Mr. _____ request for reconsideration is that, although he recognizes that he is not entitled to relief under the applicable regulations, he believes that the concerns of justice and fairness require a favorable disposition. Mr. _____ allegations in this regard principally concern the following statement by our Claims Division in its adjudication of May 18, 1979:

"Some of the problems which this Office has noted in agency determinations of allowable real estate costs arise because of confusing names given to these charges by lenders, and insufficient information supplied by the lending institution and by the employee with his claim for reimbursement".

In response to this observation Mr. _____ feels the adjudication of his claim was unfair. He states that:

B-195471

"The charges applied by the bank at the closing on the home I purchased were general in nature. As a result, when I reviewed the Joint Travel Regulations (JTR's) prior to submitting my voucher, I had no idea what I was entitled to. I felt that I should claim the entire amount, and the cognizant individuals, who would review my voucher, would allow or disallow expenses. Unfortunately, these people had the same problem interpreting the bank's statement and the JTR's because they approved the total amount I had claimed."

Thus Mr. contention on appeal is that since he acted in good faith in submitting the original reimbursement voucher and since Government officials were responsible for reviewing and certifying the voucher for payment, any attempt by the Government to recover an erroneous overpayment in his case would be against equity and good conscience.

In accordance with our procedures for review and reconsideration of claims settlements, applications for review should state the errors which the applicant believes have been made in the settlement and which form the basis of his request for reconsideration. 4 C.F.R. § 32.2 (1970). While Mr. has not alleged any error of fact or law in the adjudication of his claim by our Claims Division, the basis of his present appeal is a request for waiver of the erroneous overpayment predicated on concerns of equity and good conscience.

The erroneous overpayment in the amount of \$475.50, constitutes a valid debt which Mr. owes to the account of 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 action by the Department of the Army under the authority provided in 31 U.S.C. § 952(b) (1976). See for example, B-180674, November 25, 1974.

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

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

B-195471

"(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.)

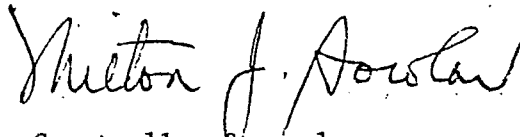
The exercise of such statutory authority by the Comptroller General or the head of the agency is specifically precluded in Mr. case because the overpayment in question involved "relocation expenses payable under section 5724a" of title 5 of the United States Code. See also 4 C.F.R. § 91.2(c) (1979). Therefore, notwithstanding equitable considerations that might be involved, there is no legal authority upon which Mr. debt may be waived.

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. continued employment, collection must be attempted. See B-189701, September 23, 1977, and cases cited therein. This is especially true in Mr. case where he is employed by the Government and the overpayment may be collected by administrative set off of future monies due him pursuant to 5 U.S.C. § 5514 (1976). See also 4 C.F.R. § 102.5 (1979).

B-195471

It is unfortunate that Mr. _____ was erroneously authorized certain allowances which in fact are not reimbursable. However, it is a well settled rule of law that the Government is not estopped from repudiating erroneous advice and authorizations of its officials, and any payments made on the basis of such erroneous advice or authorizations are recoverable by the Government. 56 Comp. Gen. 131, 136 (1976) and cases cited therein. Thus, the fact that Army personnel may have been responsible for the erroneous certification of his voucher does not provide a basis to relieve him from the obligation to refund the amount overpaid.

Accordingly, the adjudication of our Claims Division in Mr. _____ case is affirmed and all monies advanced to Mr. _____ in excess of his statutory entitlement must be recovered.



For the Comptroller General
of the United States