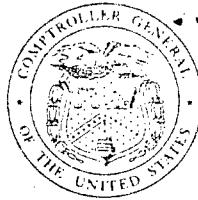


13163 Pool 762

DECISION



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

FILE: B-197495

DATE: March 18, 1980

MATTER OF: Stephen E. Goldberg - relocation expenses -
waiver authority - Federal Reserve Bank

DLG-04129
DLG-04131

DIGEST:

(1) Employee of Federal Reserve Bank of Boston transferred to position with Federal Election Commission in Washington, D.C., and was authorized and reimbursed relocation expenses under 5 U.S.C. §§ 5724 and 5724a. Amount reimbursed represents erroneous payment of relocation expenses. Employee is not entitled to relocation expenses under 5 U.S.C. §§ 5724 and 5724a since those sections restrict reimbursement to an employee of an agency and Federal Reserve Bank of Boston is not an "agency" as defined in 5 U.S.C. § 5721(1) and 5 U.S.C. § 105. Thus employee who transfers from the Federal Reserve Bank of Boston is not eligible for relocation expenses under 5 U.S.C. §§ 5724 and 5724a.

(2) Employee of Federal Reserve Bank of Boston was erroneously authorized and reimbursed for relocation expenses in connection with his transfer to the Federal Election Commission. Amount erroneously paid represents valid debt due the account of the United States which must be repaid since overpayment of 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 Collection Act; and Government cannot be bound beyond actual authority conferred upon its agents by statutes or regulations. See cases cited.

This decision is rendered in response to a submission by Mr. Robert N. Baker, an authorized certifying officer of the Federal Election Commission (FEC), concerning the propriety of reimbursing Mr. Stephen E. Goldberg for relocation expenses in connection with his appointment with the FEC on May 7, 1979. For the reasons stated below we conclude that the total amount reimbursed to Mr. Goldberg for travel, transportation, and relocation expenses is an erroneous overpayment that constitutes a debt which Mr. Goldberg owes to the account of the United States.

Personnel Name

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The record indicates that Mr. Goldberg transferred from the Federal Reserve Bank, Boston, Massachusetts, to a position with the FEC effective May 7, 1979. In connection with this employment responsible FEC officials authorized and reimbursed Mr. Goldberg for relocation expenses and allowances in the amount of \$1,271.49. Subsequently, the FEC Personnel Office contacted the Federal Reserve Bank of Boston regarding the transferability of Mr. Goldberg's service with the Federal Reserve Bank to the U.S. civil service retirement system. At that time the Personnel Office was informed by the Federal Reserve Bank of Boston that the Federal Reserve System is separate and distinct from any Government offices and agencies and its policies and benefits are unrelated to any Government or civil service systems.

As a result, the FEC asked us whether the employees of a Federal Reserve Bank are employees of an agency as defined in 5 U.S.C. §5721 and, if they are not, whether the FEC erred in reimbursing the relocation expenses of Mr. Goldberg. The FEC also specifically asked the following question:

"If it is determined that Mr. Goldberg was mistakenly reimbursed, must the Agency ask for the return of the funds or since the payment was requested and made in good faith under the belief that his prior service was Government service, can the Agency waive reimbursement, according to the general rules of equity, as was determined in the Comptroller General Decision of March 2, 1976, B184041?"

Sections 5724 and 5724a (1976) of title 5, United States Code, which authorize an agency to pay transferred employees travel and transportation expenses, various allowances, and relocation expenses, are limited by section 5721(2) to apply only to "an individual employed in or under an agency." Thus, an individual's entitlements under these statutes are predicated on the requirement that the agency from which he transfers and the agency to which he transfers are within the statutory coverage. See B-164854, August 1, 1968. The term "agency" is defined in section 5721(1) as follows:

- "(1) 'agency' means—
- (A) an Executive agency;
 - (B) a military department;
 - (C) a court of the United States;
 - (D) the Administrative Office of the United States
Courts;
 - (E) the Library of Congress;
 - (F) the Botanic Garden;

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(G) the Government Printing Office; and
(H) the government of the District of Columbia;
but does not include a Government controlled corporation;* * *

An executive agency, under section 105 of title 5, United States Code, includes an executive department, a Government corporation, and an independent establishment. In accordance with section 103 of title 5, a Government corporation means a corporation owned or controlled by the Government of the United States. An independent establishment is defined in 5 U.S.C. § 104 as follows:

"For the purpose of this title, 'independent establishment' means—

"(1) an establishment in the executive branch (other than the United States Postal Service or the Postal Rate Commission) which is not an Executive department, military department, Government corporation, or part thereof, or part of an independent establishment; and

"(2) the General Accounting Office."

The Federal Reserve System was established by the Federal Reserve Act of 1913, now codified in 12 U.S.C. § 221, et seq. (1976). The Civil Service Commission (now Office of Personnel Management) has ruled that service with a Federal Reserve Bank is not creditable service under the Civil Service Retirement Act because a bank is not a Government-owned corporation. Federal Personnel Management Supplement 831-1, Appendix C. In this connection our examination of 12 U.S.C. §§ 282 and 283 indicates that the Federal Reserve Banks are owned by the member banks of the various Federal Reserve districts and a limited number of public stockholders. ✓

Therefore, we conclude that the Federal Reserve Bank of Boston is not an "agency" within the meaning of 5 U.S.C. § 5721(1). Accordingly, it follows that an employee of the Federal Reserve Bank of Boston is not covered by the provisions of 5 U.S.C. §§ 5724 and 5724a, and is not entitled to travel and transportation expenses or allowances and relocation expenses thereunder upon transfer to an agency covered under those sections. Rather, the situation here is analogous to that of a new employee who, unless he qualifies as a manpower shortage category employee, must bear the expenses of reporting to his first duty station. Thus, Mr. Goldberg is not eligible for reimbursement of relocation expenses under 5 U.S.C. §§ 5724 and 5724a.

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The resulting erroneous overpayment of relocation expenses by the FEC in the amount of \$1,271.49, constitutes a valid debt which Mr. Goldberg owes to the account of the United States. Recovery is required absent any legal authority for waiver of the debt under the provisions of 5 U.S.C. § 5584, and absent grounds for compromise or termination of collection action by the FEC under the authority provided in 31 U.S.C. § 952(b). See James A. Schultz, B-195167, October 12, 1979, 59 Comp. Gen. ___, and cases cited therein.

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

"(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. Goldberg's case because the overpayment in question involved "travel and transportation expenses and allowances and relocation expenses payable under section 5724a" of title 5, United States Code. See also 4 C.F.R. § 91.2(c) (1979). Therefore, notwithstanding equitable considerations which may be involved, there is no legal authority upon which Mr. Goldberg's debt may be waived. Michael W. Matura, B-195471, October 26, 1979.

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

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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. Goldberg's continued employment, collection must be attempted. Robert F. Granico, B-189701, September 23, 1977. This is especially true in Mr. Goldberg'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 (197). Alfred E. Gent, B-197121, January 23, 1980.

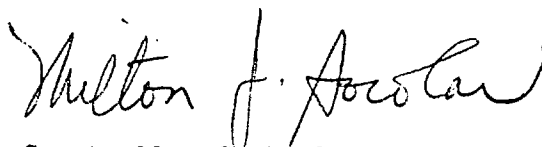
It is unfortunate that Mr. Goldberg as a new appointee was erroneously authorized expenses which are statutorily conferred only upon a transferred employee, and that he was erroneously advised that he would be entitled to reimbursement for his relocation expenses which were not properly allowable to him under applicable laws and regulations. However, it is a well-established 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. Schultz, *supra*, and cases cited therein.

Finally, our decision in John T. Edwards III, B-184041, March 2, 1976, referred to by the FEC, has only a marginal and unpersuasive application to the present case. In the Edwards case an employee of the Tennessee Valley Authority was erroneously appointed to a civil service position within the Bureau of Reclamation — whose authorizing officials had erroneously determined that Mr. Edwards held competitive status under Civil Service Commission rules and regulations. Incident to his erroneous appointment Mr. Edwards received certain travel and relocation expenses. Where Mr. Edwards performed continuously under the erroneous appointment, and the agency subsequently took steps which led to a proper appointment, we held that collection of the erroneous payment of total salary during the period of improper appointment could be properly waived — as an erroneous payment of pay — pursuant to 5 U.S.C. § 5584. We further held that Mr. Edwards could retain the amount reimbursed for travel and relocation expenses since they were authorized subject to his actual appointment which was ultimately approved. In this regard it should be pointed out that Mr. Edwards' transfer was between the Tennessee Valley Authority, an executive agency as defined by 5 U.S.C. § 105, and the Bureau of Reclamation which is part of the Department of the Interior, thus his travel and relocation expenses

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were clearly covered by the provisions of 5 U.S.C. §§ 5721, 5724 and 5724a. As a result we believe the Edwards case is distinguishable from, and not dispositive of the issues presented in Mr. Goldberg's case.

Accordingly, the overpayment to Mr. Goldberg may not be waived and payments to him excess of his authorized statutory entitlement should be recovered.

A handwritten signature in cursive script, reading "Milton J. Arotan".

FOR THE Comptroller General
of the United States