

**DECISION**

19742 *Chk*  
**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

FILE: B-201823

DATE: October 9, 1981

MATTER OF: Richard A. Falanga -  
Nontemporary storage fees

- DIGEST:
1. An employee of the Drug Enforcement Administration was transferred overseas for the period of August 1971 to November 1975. The Government paid for the nontemporary storage of his household goods from August 1971 to July 1979, three and a half years more than authorized under Federal Travel Regulations. Regardless of an alleged request by the employee in December 1973 to the storage company to dispose of his goods, he is liable for the overpayments. The employee failed to notify the Government of his request and to confirm his request with the storage company.
  2. Upon a determination of indebtedness under 5 U.S.C. § 5514, a Federal employee's debt arising from an erroneous payment made by his agency on his behalf for storage of his household goods may be collected from his pay. This procedure is not subject to the 6-year statute of limitations in 28 U.S.C. § 2415(d).

This decision is in response to a request by the Acting Assistant Attorney General for Administration, Department of Justice, for a determination as to whether an employee is liable for overpayments the Department made for storage of his household goods. We find that he is liable for the overpayments and they should be collected from him.

The employee in question, Mr. Richard A. Falanga of the Drug Enforcement Administration, was transferred from New York to Paris, France, in August 1971, and from Paris to Rome, Italy, in January 1974. He was returned to duty in New York in November 1975. In connection with his transfer to Paris in 1971, some of Mr. Falanga's household goods were placed in nontemporary storage at Government expense with Neptune World Wide Moving, New Rochelle, New York. The

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agency paid the storage company, pursuant to monthly billings, from the initial storage in August 1971 to July 1979. In July 1979, the agency discovered that it had paid excess storage costs of \$507.16 since Mr. Falanga's entitlement to storage at Government expense ended in January 1976 when he had returned to the United States. Mr. Falanga indicates that he wrote the storage company from France in December 1973 asking it to dispose of his property, and therefore, he does not believe he should be held liable for any excess storage costs. He did not inform his agency of his request, and the company indicates it never received this request.

The Acting Assistant Attorney General asks us who is liable for the excess payments, the employee or the storage company, and whether the statute of limitations at 28 U.S.C. § 2415 would have any effect on the collection of those payments.

Nontemporary storage of the household goods of an employee assigned to a permanent station outside the continental United States is authorized by 5 U.S.C. § 5726 under regulations prescribed by the President. The regulations in effect during the period in question (1971-1979) are found in Office of Management and Budget Circulars A-56, sections 6.7 (effective April 1967) and 5.2 (effective August 1971) superseded by Federal Travel Regulations (FPMR 101-7), paragraph 2-9.2 (May 1973). Under those regulations nontemporary storage of the employee's household goods at Government expense extends to the beginning of the second month after his tour of duty overseas ends, unless the agency extends the period to avoid inequity. In Mr. Falanga's case his overseas tour ended in November 1975 and although the agency erroneously continued paying the storage charges, the storage period was not extended to avoid inequity. Therefore, Mr. Falanga's entitlement to storage at Government expense ended at the beginning of January 1976 and the charges his agency paid for storage of his goods after that date were erroneous payments made on his behalf.

While Mr. Falanga indicates that he wrote to the storage company in 1973 directing them to dispose of his goods, the company indicates it has no record of receiving those directions and Mr. Falanga has produced no evidence of receiving an acknowledgment that his directions were received. Also,

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although he knew the Government was paying for the storage of his goods, he did not inform his agency that he was directing the storage company to dispose of those goods.

Although Mr. Falanga was not being paid the money directly, he knew that the Government was paying the storage company. It was at least partially due to his failure to keep his agency advised that his goods remained in storage and the charges continued to be paid on his behalf by the Government. Also, since no evidence has been presented to show that the storage company knew or should have known of the unauthorized period of storage, it appears to have rendered its services in good faith and there is no basis to collect the unauthorized payments from the company. See 29 Comp. Gen. 317 (1950). Therefore, Mr. Falanga is the party to be held liable for the excess payments. See 29 Comp. Gen. 317 and B-200795, May 26, 1981.

In regard to what effect, if any, the statute of limitations found at 28 U.S.C. § 2415 would have on the collection, subsection (d) of that statute provides in part that every action brought for the recovery of money erroneously paid to or on behalf of any civilian employee of any agency of the United States incident to the employment or services of such employee, shall be barred unless the complaint is filed within 6 years after the right of action accrues.

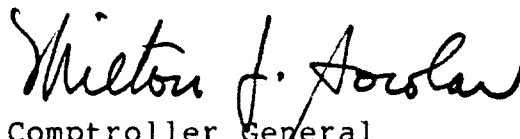
The erroneous payments made on Mr. Falanga's behalf began when the Government paid the storage charges for the month of January 1976. Therefore, the 6-year limitation period applicable to that payment began to run at the time that payment was made and it began again at the time each subsequent payment was made. Thus it appears that the earliest that an action for recovery of any of the erroneous payments would be barred by 28 U.S.C. § 2415(d) would be sometime after January 1, 1982.

However, it appears that Mr. Falanga is still an employee of the Department of Justice, and therefore, it appears that administrative collection of the erroneous payments from him may be made without filing a court action which would be subject to the limitations of 28 U.S.C. § 2415. Erroneous payments made by an employee's agency to or on his behalf may be collected administratively from the employee's pay when the head of the agency or his designee

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determines the employee is indebted for such payments. 5 U.S.C. § 5514. If, as appears to be the case, Mr. Falanga is still employed by the Department of Justice, the procedure prescribed under 5 U.S.C. § 5514 would be available to collect the debt, and that procedure is not subject to the 6-year statute of limitations, 28 U.S.C. § 2415. 58 Comp. Gen. 501 (1979).

In addition since charges for storage of household goods are considered transportation expenses, a debt arising from erroneous payments of storage charges is precluded from consideration for waiver under 5 U.S.C. § 5584.

A handwritten signature in cursive script that reads "Milton J. Fowler".

Acting Comptroller General  
of the United States