



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Richard J. Waldman - Travel, Transportation and  
Living Quarters Allowance - Waiver  
**File:** B-224647  
**Date:** September 28, 1987

### DIGEST

1. National Security Agency employee transferred to overseas post is not entitled to any travel, transportation or relocation expenses, overseas living quarters allowances, or supplementary post allowances, erroneously paid by the agency on account of employee's dependent son. Son was in sole legal custody of employee's former spouse by virtue of a court order and was therefore not a member of the employee's household as required by the pertinent regulations.
2. With enactment of Public Law No. 99-224, December 28, 1985, the waiver authority in 5 U.S.C. § 5584 has been extended to include erroneous payments of travel, transportation and relocation expenses and allowances. This amendment is not retroactive, so the expanded waiver authority applies only to overpayments made on or after December 28, 1985. The Comptroller General lacks jurisdiction to consider waiver of overpaid travel and transportation expenses and supplementary post allowances for National Security Agency employee's minor son in connection with employee's overseas transfer, since such expenses were paid prior to the December 28, 1985, effective date of the expanded waiver act coverage.
3. Waiver of overpayments covering living quarters allowance for employee's non-dependent son is denied since misinformation concerning the status of minor sons which the employee provided to agency authorizing officials in connection with his request for overseas transfer allowances constitutes fault on the part of employee within the meaning of 5 U.S.C. § 5584(b)(1) (1982). This provision precludes the Comptroller General from exercising equitable waiver authority where the employee was at fault in providing erroneous information that gave rise to the erroneous payment.

040023

## DECISION

The question presented in this case is whether an employee of the National Security Agency who was transferred from Fort Meade, Maryland, to Wiesbaden, Germany, must repay to the agency amounts he received in connection with that transfer on account of his child who was not a member of his household.<sup>1/</sup> For the following reasons the transportation expense and the allowances he received on account of the child must be repaid, since no authority existed prior to December 28, 1985, to waive erroneous payments of travel, transportation, and relocation expenses. Additionally, waiver under 5 U.S.C. § 5584 is inappropriate for those payments which could be considered for waiver.

## BACKGROUND

The agency reports that in connection with his overseas transfer in June 1984 Mr. Richard J. Waldman identified two sons as dependents under the entry labeled "Dependent Information" on Standard Form 3920. Mr. Waldman wrote the names of his current wife and his two minor sons by a previous marriage, and he indicated that his two minor sons would be delaying their travel until after he and his wife arrived at the overseas post. Under the entry "local address and telephone number" he wrote his Laurel, Maryland, address and telephone number for himself and his wife only. As a result, agency travel officials had no way of determining that the two minor sons were children of a previous marriage, living with their natural mother, Mr. Waldman's former spouse, at a different address in Silver Spring, Maryland. The agency also could not determine from Mr. Waldman's disclosures that sole legal custody had been given to the natural mother by a final divorce decree which provided Mr. Waldman only with visitation rights.

The first of Mr. Waldman's minor sons traveled to Wiesbaden at Government expense on or about July 29, 1984, and visited with Mr. Waldman and his wife there until August 25, 1984, when he returned to his mother's residence in Silver Spring to resume his permanent residence with her and attend high school there. This son's return travel to Silver Spring was officially approved as student travel at Government expense. The second son never traveled to Wiesbaden, because after his trip was

---

<sup>1/</sup> The question was presented by Kenneth F. Chute, Finance and Accounting Officer, National Security Agency.

rescheduled for December 1985, the National Security Agency determined that there was no entitlement to either son's travel to Wiesbaden. The two minor sons were not members of the employee's household at the time the employee reported for duty at his new permanent duty station as required by the definition of "dependent/immediate family" in Volume 2 of the Joint Travel Regulations, Appendix D, for the purpose of authorizing transportation and relocation expenses of the employee's immediate family members.<sup>2/</sup> Since the agency determined that the two sons were in the sole legal custody of their mother, Mr. Waldman's former spouse, they could not be members of Mr. Waldman's immediate family for purposes of transfer and relocation entitlements to the overseas post of duty. As a result, the National Security Agency requested that Mr. Waldman return to the Government \$796 for travel expenses and \$12.38 per diem it paid for the first son's trip to Wiesbaden on or about July 29, 1984. It also sought repayment of the \$608.56 living quarters allowance expenses and \$66 supplementary post allowance which had been paid to Mr. Waldman on account of his son.

Mr. Waldman does not contest the ruling that his sons do not meet the definition of "members of the employee's household." He does contend that the agency knew, or should have known, of his marital status and the appropriate dependency of his sons prior to any overseas travel. In addition, Mr. Waldman states that he could not detect the overpayments in question because the finance office made the computations on the basis of fluctuating foreign exchange rates and he had to rely on these computations. Mr. Waldman does not believe he should be required to repay the Government because the National Security Agency had documents (health benefit form, life insurance form, and personal personnel security information) showing that his sons were not members of his household. Thus, he states that since the agency should have been aware that there was no entitlement but paid him anyway, and since he did not know that these payments were unjustified, these overpayments should be waived.

#### ANALYSIS AND CONCLUSION

There appears to be no dispute on the basis of the administrative record before us that Mr. Waldman was not entitled to transportation and travel expenses for his

---

<sup>2/</sup> A substantially identical definition of immediate family members is provided in the Federal Travel Regulations, para. 2-1.4d (Supp. A, August 23, 1982), incorp. by ref., 41 C.F.R. § 101-7.003 (1983).

sons in connection with his transfer to an overseas post. In order for a divorced employee's child to be a member of the employee's household, the child must be in the legal custody of the employee and must reside with the employee beyond the exercise of mere visitation rights. Ernest F. Gianotti, 59 Comp. Gen 450, at 456 (1980). Also, failure to satisfy a similar requirement in the Standardized Regulations, governing overseas allowances of civilian employees, made Mr. Waldman ineligible for the increased living quarters allowance and supplemental post allowance he received because of his son's visit. Both allowances may be increased if the employee has additional "family members." See sections 134 and 932.22 of the Standardized Regulations concerning the living quarters allowance, as well as section 233 pertaining to the supplementary post allowance. A child is within the definition of "family member" in section 040m of the Standardized Regulations only if the child normally resides with the employee at the overseas post. Since Mr. Waldman's sons never intended to perform anything more than visitation travel, the agency correctly construed that there was no increase in Mr. Waldman's entitlements.

The erroneous overpayments to Mr. Waldman did not bestow any right to the unauthorized benefits received. When a Government employee makes an improper payment outside the scope of the employee's authority, the United States is not estopped to deny the validity of the overpayment and seek recoupment. See for example Joseph Pradarits, 56 Comp. Gen. 131 (1976), and court cases cited therein. This rule applies even though the recipient of the payment may have had no actual knowledge that he was receiving an unauthorized payment.

We have reviewed Mr. Waldman's request for waiver of the erroneous payments of overseas travel and relocation allowances under 5 U.S.C. § 5584. Under this authority waivers are permitted only when the collection of the erroneous payments would be against equity and good conscience and not in the best interest of the United States. Moreover, there must be no indication of fraud, misrepresentation, fault or lack of good faith on the part of the employee receiving the overpayment. See 5 U.S.C. § 5584(b)(1). Prior to December 28, 1985, waiver consideration was restricted to overpayments of an employee's "pay and allowances." Claims arising from erroneous payments of travel, transportation, and relocation expenses and allowances were excluded. With the enactment of Public Law No. 99-224, December 28, 1985, the waiver authority in 5 U.S.C. § 5584 was extended to include erroneous payments of travel, transportation, and relocation expenses and allowances. However, this amendment was not

retroactive, so the expanded waiver authority applies only to travel-related overpayments made on or after December 28, 1985. See generally B-197290, February 4, 1986. As a result, since Mr. Waldman's minor son's travel and transportation costs to Wiesbaden were paid before December 28, 1985, there is no jurisdiction to consider waiver of these items under 5 U.S.C. § 5584. Further, as the supplementary post allowance was in the nature of a relocation expense, its payment prior to the effective date of the expanded waiver authority is similarly precluded from consideration.

The erroneously overpaid living quarters allowance is within the category of "pay and allowances" and may be considered for waiver under 5 U.S.C. § 5584 with respect to overpayments arising both before and after December 28, 1985. See Clyde A. Finnell, B-199800, August 12, 1981. However, these erroneous overpayments resulted directly from the misinformation which, however unwittingly, Mr. Waldman provided to the agency for the purpose of preparing overseas transfer entitlement authorization documents. Thus, although there is no indication that Mr. Waldman acted fraudulently to increase his right to compensation, it would be inequitable to allow Mr. Waldman to profit from his provision of erroneous information to agency travel officials by waiving the Government's right to recoup the erroneous payments. In addition pursuant to 5 U.S.C. § 5584(b)(1), the Comptroller General may not exercise waiver authority in any claim where there exists in connection with the claim an indication of fault on the part of the employee. We conclude that he is not free from fault in the creation of the erroneous overpayments in this case and therefore waiver would be inappropriate.

Additionally, while the agency has not questioned the son's return travel from Wiesbaden to Silver Spring, Maryland, it would appear that no authority existed for this travel. See section 280 et seq., Standardized Regulations. The agency should review the circumstances of that travel and, if appropriate, initiate collection action for it also.

*for*   
Comptroller General  
of the United States