



Comptroller General
of the United States

Washington, D.C. 20549

147018

Decision

Matter of: Simon F. Kula
File: B-247346
Date: June 24, 1992

DIGEST

The amount of an overpayment received by an employee for house purchase expenses must be considered in determining the amount of reimbursement the employee is entitled to receive for other expenses incurred in connection with a permanent change of station, even though the erroneous payment was waived. While the waiver extinguishes the underlying debt arising from the erroneous payment, the amount of the payment should nevertheless be set off in determining the amount of reimbursement due the employee for other relocation expenses.

DECISION

The Department of the Army requests a decision on whether it may offset a payment for a certain portion of relocation expenses otherwise due an employee by the amount of an erroneous payment previously received by that employee for other relocation expenses which has been waived by our Office. For the following reasons, we hold that the Army may set off the erroneous payment against the amount due.

Mr. Simon K. Kula, an Army employee, was granted waiver of erroneous relocation expense payments to him totaling \$1,347.50 under 5 U.S.C. § 5584 (1988) by our Claims Group, acting on behalf of the Comptroller General, in Settlement Certificate, Z-2905121, August 29, 1990. He was also entitled to reimbursement for additional relocation expenses incident to the same permanent change of station.¹

The Army explains that the overpayment was made to Mr. Kula in connection with the purchase of a residence (a dwelling only), and at that time Mr. Kula entered into a leasehold agreement for the parcel of land that the dwelling was situated on. The Army reports that it is a common real

¹When Mr. Kula's waiver request was transmitted to GAO on August 23, 1990, the Army did not advise our Claims Group that Mr. Kula had another claim pending on the same real estate transaction.

estate practice in Hawaii to purchase the dwelling, rent the land under a leasehold agreement, and later purchase the land when the estate entitlement converts from leasehold to fee simple property. Mr. Kula's current request for reimbursement is in connection with the separate purchase of land on which the dwelling is situated. The Army asks whether it may offset the amount of the waived overpayment made to Mr. Kula in connection with his purchase of the residence against the amount due him for purchase of the land on which the residence is situated.

Once an erroneous payment to an employee has been waived by our Office the underlying debt is extinguished. Lester L. Jefferson, B-219000, Oct. 9, 1985. However, the waiver does not change the fact that the employee has received the payment. Thus, in Maureen S. Fearn, 65 Comp. Gen. 696 (1986), we held that the widow of a deceased member of the military was not entitled to survivor annuity payments for the period of time during which she was erroneously paid her deceased husband's retired pay, even though we had previously waived the overpayments of retired pay. We pointed out that had we known when we granted the waiver that the widow was also entitled to a survivor annuity, we would have only waived the net debt that she owed rather than the full amount of the overpayments of retired pay. Id. at 699. See also Ralph R. Bergman, B-185192, Mar. 2, 1976, where we held that a waived overpayment received by an employee as separation pay must be considered in determining the amount of back pay the employee is entitled to receive as a result of a later finding that the employee suffered an unjustified personnel action.

Similarly, while the waiver granted to Mr. Kula extinguished any debt arising from the overpayment, the amount he received must be considered in determining the amount of reimbursement due him in connection with his purchase of the land. We recognize that the overpayment was made to Mr. Kula in connection with the first real estate transaction. Nevertheless, the two transactions are incident to the same change of station. If we had known that Mr. Kula was claiming reimbursement in connection with his land purchase at the time the waiver request was forwarded to our Office, we would have granted waiver for only the net amount of his debt. 65 Comp. Gen. 696, supra.

Accordingly, the Army should pay Mr. Kula only that amount, if any, of relocation expenses remaining due to him after offset for the prior erroneous overpayment which was waived.


James F. Hinchman
General Counsel