



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Dr. Loren T. Wilkenfeld

File: B-265864

Date: December 7, 1995

DIGEST

A new employee received travel orders authorizing the shipment of her household goods from her residence to her duty station. Although the travel orders did not authorize the shipment of the employee's two vehicles, the employee chose to have them shipped with her household goods. The resulting debt for the excess costs of shipping the vehicles may not be waived. Generally, debts resulting from excess costs or excess weight charges may be considered for waiver only if the employee is able to show that the costs were incurred in reliance on an erroneous authorization from the agency. Although a representative from the carrier may have provided the employee with erroneous advice, the employee has not established that she received any erroneous advice from an agency official.

DECISION

Dr. Loren T. Wilkenfeld requests reconsideration of our Claims Group's settlement, Z-2942033-025, Mar. 23, 1995, denying her request for waiver of her \$1,794.99 debt to her agency for excess costs incurred in the shipment of her automobiles to her duty station. The settlement is affirmed.

BACKGROUND

Incident to her appointment to the Department of Veterans Affairs Medical Center (VAMC) in Salisbury, North Carolina, the agency issued Dr. Wilkenfeld travel orders authorizing the shipment of her household goods (HHG) to Salisbury, from her residence in Carlsbad, California, using a government bill of lading (GBL). Although her travel orders did not authorize the shipment of her two vehicles, Dr. Wilkenfeld had the vehicles shipped to her duty station with her HHG. Because automobiles are excluded from the types of HHG that may be shipped at government expense, see Federal Travel Regulation (FTR) 41 C.F.R. § 302-1.4(j)(i), the agency has sought to recover from Dr. Wilkenfeld the excess costs for the shipment of the vehicles.

Dr. Wilkenfeld acknowledges that before her goods were picked up for shipment, a VA official told her that the VA would not pay to have her vehicles shipped. However, Dr. Wilkenfeld states that a representative of the carrier told her that she could ship her vehicles with her HHG for a handling charge of \$113.50 per vehicle and that she verified this information with Mr. Jerry Lanning, the agency purchasing agent who arranged for the shipment of her HHG.

Mr. Lanning asserts that he told Dr. Wilkenfeld, as well as other new hires, that "the government would pay the carrier for the move but that charges related to the shipment of cars would have to be reimbursed by the employee." This statement is corroborated by the GBL, issued and signed by Mr. Lanning, which is the authorization provided to the carrier. The GBL includes the statement, "Employee's car has been authorized to ship at same time as HHG move and any charges will be paid by government and then reimbursed by the employee."

After the agency notified Dr. Wilkenfeld of its intention to collect the excess charges, Dr. Wilkenfeld requested that the debt be waived on the grounds that she was misled about her relocation entitlement and that she had not been properly counseled. Our Claims Group denied waiver, noting that there were no errors on Dr. Wilkenfeld's travel orders, and that the carrier's representative who misinformed Dr. Wilkenfeld was not a government employee and had no authority to speak for the agency.

In her reconsideration request, Dr. Wilkenfeld again asserts that Mr. Lanning personally informed her that the agency would pay to ship her vehicles with her HHG. As proof, she submitted a copy of the "Authorization for Payment of Moving Expenses" with a handwritten note, which she says was added after she signed the form, stating "OK to have car shp'd at same time, Marsha handling." ("Marsha" refers to the carrier's representative.) She also attached a copy of a memorandum from the Salisbury VAMC's chief of staff to the facility's director recommending waiver based on the recommendation of the facility's traffic manager. Dr. Wilkenfeld further states that she did not sign the GBL and therefore did not agree to pay for the shipment of her vehicles. Finally, she notes that the charges for the shipment of her vehicles were included in the amount of relocation benefits reported to the Internal Revenue Service as taxable income to her.¹

¹Generally, relocation benefits are considered taxable income by the federal and many state and local governments. However, the FTR also provides for an allowance to help defray the additional taxes owed by employees who are provided relocation benefits. See FTR Part 302-11.

OPINION

The Comptroller General may waive the collection of debts arising from the erroneous payment of transportation allowances if "collection would be against equity and good conscience and not in the best interest of the United States," and provided further, that there is no "indication of fraud, misrepresentation, fault, or lack of good faith" attributable to the employee. 5 U.S.C. § 5584(a) and (b)(1).

Generally, debts based on excess costs incurred in the shipment of an employee's HHG are not subject to waiver since the agency simply is recouping payments made in the normal course of business to satisfy its obligation to the carrier. Edward L. Davis, B-252103, June 17, 1993. In some limited circumstances, we have granted waiver where an employee was able to show that the excess charges resulted from the erroneous authorization of agency officials. See Gunnery Sergeant Robert S. Jackowski, USMC, B-229335, Oct. 21, 1988, in which excess weight was shipped in reliance on a written authorization of an erroneous weight allowance. For oral advice to rise to this level, the employee must clearly show that the advice was given by an agency official with the responsibility for providing advice and that it clearly purported to provide the authorization on which the employee relied. Edward L. Davis, supra. We do not believe Dr. Wilkenfeld has met this test.

The handwritten note on the Authorization for Payment of Moving Expenses does not establish that the agency provided Dr. Wilkenfeld with erroneous advice. It is not clear who wrote the note, and it does not purport to authorize including the cost of shipping the vehicles with the cost of shipping the HHG. Although a representative from the shipping company may have told her otherwise, since that person was not an agency employee and not authorized to speak for the agency, that person's erroneous advice may not serve as a basis for waiver.

While Dr. Wilkenfeld insists that the GBL does not represent an agreement on her part to pay for the shipment of the vehicles, that is not why the GBL is relevant. Rather, the importance of the GBL is that it shows what the government agreed to ship. In this case, the GBL shows that Mr. Lanning, the purchasing agent who issued it, stated on the GBL that the cost of shipping the vehicles would have to be recouped from the employee.

The memorandum from the VAMC's chief of staff acknowledges the need to provide better counseling to new employees in the future regarding their relocation benefits. The memorandum does not acknowledge, however, that any agency official provided Dr. Wilkenfeld with erroneous advice. Absent such erroneous advice, we are not authorized to grant waiver.

Finally, although the agency may have reported its shipment of Dr. Wilkenfeld's vehicles as income to her, this report, which occurred after the vehicles had been

shipped, does not constitute erroneous advice. As we noted, the travel orders themselves contained no errors and the GBL correctly noted that the employee would be responsible for any excess costs incurred for the shipment of her vehicles. Moreover, no agency official acknowledges giving Dr. Wilkenfeld erroneous advise regarding the shipment of her vehicles.

Accordingly, because Dr. Wilkenfeld has not established that she relied on erroneous advice from an agency official, her debt may not be considered for waiver.

/s/Seymour Efros
for Robert P. Murphy
General Counsel