DECISION

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

FILE: B-218675 **DATE:** October 31, 1985

MATTER OF: Dorcas Terrien - Household Goods Shipment and Temporary Storage Expenses - Erroneous Advice

DIGEST:

An employee of the Bureau of Land Management (BLM) was transferred and reported to her new duty station on June 1, 1982, but did not move her household goods until almost 2 years later. At that time she was erroneously advised that she was entitled to ship and store 18,000 pounds of household goods and was entitled to up to 180 days of temporary storage. The statute and regulations in force on the effective date of her transfer provided for shipment and storage of a maximum of 11,000 pounds and limited the temporary storage period to 60 days. The employee may not be relieved from her indebtedness for amounts shipped and stored above and beyond those limits. There is no authority for either the BLM or the General Accounting Office to waive the application of the appropriate entitlement authorities. Even though the employee received erroneous advice, the government is not estopped by the erroneous acts of its agents. Nor is there authority to waive the employee's indebtedness since waiver authority does not apply to travel and transportation expenses.

An authorized certifying officer with the Bureau of Land Management (BLM), United States Department of the Interior, has asked whether Ms. Dorcas Terrien may be relieved from liability for the cost of shipping and storing household goods in excess of the maximum allowable weight, and for the cost of storing those household goods beyond the maximum allowable storage period since she was given erroneous advice as to her actual entitlements. Ms. Terrien

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may not be relieved from her indebtedness. It is a well-settled rule of law that the government is not estopped from repudiating erroneous advice of its officials and, indeed, cannot be bound beyond the actual authority conferred upon its agents by statute or regulations. Joseph Pradarits, 56 Comp. Gen. 131 (1976), and 54 Comp. Gen 747 (1975). Regardless of the equitable considerations involved, there is no authority for the General Accounting Office to waive the application of the relevant statutory and regulatory entitlement authorities and, while certain erroneous payments of compensation or allowances may, in some circumstances, be waived under the provisions of 5 U.S.C. § 5584, that waiver authority does not extend to transportation expenses.

Ms. Terrien was employed by the BLM in Socorro, New Mexico, when, in April 1982, she was selected for and offered a transfer to a position with the BLM in Grand Junction, Colorado. Ms. Terrien reported for duty in her new position on June 1, 1982. She did not move her household goods at that time, however, because her husband remained in Socorro to continue working until he retired. By a memorandum dated February 22, 1984, Ms. Terrien requested an extension of the time limitation for completion of residence transactions and an extension of the time limitation for temporary storage of her household goods. The BLM certifying officer informed us that the Assistant Director for Administration granted Ms. Terrien an extension to June 1, 1985, to complete her residence transactions and advised her that no extension of the time limitation for temporary storage could be considered until the initial period of entitlement had expired.

On April 19, 1984, the BLM Colorado State Office issued a Government Bill of Lading (GBL) for the shipment and storage of Ms. Terrien's household goods. The GBL included the statement - "Temporary storage in transit authorized at destination not to exceed 90 days." On the date the GBL was issued the Colorado State Office apparently informed Ms. Terrien that she was entitled to 90 days temporary storage of her household goods and could apply for a 90 day extension. The Colorado State Office advised her that she was entitled to ship and store up to 18,000 pounds of household goods. On August 30, 1984, Ms. Terrien requested and was granted an extension for temporary storage of her household goods for an additional 90 days.

The BLM subsequently determined that Ms. Terrien should have been authorized shipment and storage of only 11,000 pounds of household goods and that she was entitled to temporary storage of household goods for only 60 days, with no extensions. On January 2, 1985, the BLM issued a bill for collection in the amount of $3,041.52. That amount included charges for 5,940 pounds in excess of the weight allowable for transportation of household goods, 120 days in excess of the time allowable for temporary storage of household goods, 3,320 pounds in excess of the weight allowable for temporary storage, and charges for excess valuation (insurance) on transportation and excess valuation on storage.

On March 12, 1985, Ms. Terrien wrote to the Director of the BLM, requesting relief from the bill of collection. She raised questions as to whether the proper entitlement authorities were applied, whether they were applied correctly, and why the written and oral approvals and assurances made by various BLM officials are not binding on the BLM as to preclude collection of any amounts from her. In his letter of April 12, 1985, to us, the BLM certifying officer states that he believes Ms. Terrien should be granted relief from the bill of collection in light of the documented occurrences of administrative errors in the information supplied to her. He asks whether the BLM may grant such administrative relief.

The BLM's determination of Ms. Terrien's entitlement, as reflected in the bill for collection, is correct. Ms. Terrien is entitled to reimbursement for shipment and storage of a maximum of 11,000 pounds of household goods rather than 18,000 pounds. The maximum weight limitation, as prescribed by 5 U.S.C. § 5724(a), was changed by section 118 of Public Law 98-151, November 14, 1983, 97 Stat. 977, from 11,000 pounds to 18,000 pounds. That change was added to the Federal Travel Regulations (FTR), incorporated by ref., 41 C.F.R. § 101-7.003 (1984), by the General Services Administration (GSA) in its Bulletin FPMR A-40, Supplement 10, published at 49 Fed. Reg. 13920 (April 9, 1984). That document provides that:

> "The revised provisions of chapter 2 are effective for employees and for certain new appointees whose effective date of transfer or appointment is on or after November 14, 1983. For purposes of these regulations,

> the effective date of transfer or appointment is the date the employee or new appointee reports for duty at the new or first official station."

The latter statement reflects FTR para. 2-1.4j (Supp 1., September 28, 1981), which defines the effective date of an employee's transfer as "[T]he date on which an employee or new appointee reports for duty at his/her new or first official station." There seems to be no disagreement that Ms. Terrien reported for duty in Grand Junction on June 1, 1982. As a result, that date is the effective date of her transfer and she does not qualify for the 18,000 pound weight allowance.

Similarly, Ms. Terrien is not entitled to the 90 day period for temporary storage of household goods or to the extension of that period for an additional 90 days. She is entitled to reimbursement of 60 days of temporary storage - the maximum time period prescribed by the version of FTR para. 2-8.2c in effect on the date of her transfer. That provision was amended to allow the 90 day period and, in certain circumstances, a 90 day extension, by GSA in its Bulletin A-40, Supplement 4, published at 47 Fed. Reg. 44565 on October 8, 1982. That document provided that the amendment was effective "for employees whose effective date of transfer (date the employee reports for duty at the new official station) is on or after October 1, 1982." Ms. Terrien's transfer date of June 1, 1982, caused her to be ineligible for the longer period of temporary storage.

Neither the provisions of 5 U.S.C. § 5724(a), setting forth the maximum weight limitation for the shipment of household goods, or the provisions of FTR para. 2-8.2c, prescribing the maximum period of temporary storage, may be waived or modified by the employing agency or the General Accounting Office, regardless of the extenuating circumstances. Dale C. Williams, B-214596, August 29, 1984, and Ronald E. Adams, B-199545, August 22, 1980. Accordingly, while it is unfortunate that Ms. Terrien received erroneous advice as to entitlements which were not allowable, payment on the basis of such erroneous advice may not be allowed.

As the Court of Claims ruled in Montilla v. United States, 457 F.2d 978, at 986-87 (Ct. Cl. 1982), "[U]nless a law has been repealed or declared unconstitutional by the courts, it is a part of the supreme law of the land and no officer or agent can by his actions or conduct waive its

provisions or nullify its enforcement." The government is not estopped from repudiating erroneous advice of its officials and, indeed, cannot be bound beyond the actual authority conferred upon its agents by statute or regulation. Joseph Pradarits, 56 Comp. Gen. at 136, and 54 Comp. Gen. at 749. This principle, that the government cannot be estopped by the erroneous advice of its employees, was affirmed by the Supreme Court in Schweicker v. Hansen, 450 U.S. 785 (1981).

Certain claims of the United States arising out of erroneous payments of pay or allowances of civilian employees may be waived under the provisions of 5 U.S.C. § 5584 (1982). The exercise of such statutory authority, however, by the Comptroller General or the head of the agency is specifically precluded in Ms. Terrien's case because the waiver authority prescribed by section 5584 does not extend to travel or transportation expenses. As a result, Ms. Terrien's indebtedness may not be waived under this authority and, as we have explained above, there is no other basis upon which we may relieve her of her indebtedness.

for Milton J. Socolar
Comptroller General
of the United States