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DECISION



DIGEST - L - Mil

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

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FILE: B-191813

DATE: July 6, 1978

MATTER OF: Staff Sergeant [REDACTED], USAF

- DIGEST:
1. Payment may not be made on Air Force member's claim for reimbursement of charges incurred for an unauthorized shipment of household goods from Delaware to Spain even though his wife was erroneously advised by Air Force officials that the goods could be shipped at Government expense, since in the absence of specific statutory authority the United States is not liable for the negligent or erroneous acts of its officers, agents, or employees, and the member therefore gained no entitlement to the shipping costs by reason of the erroneous advice.
  2. Claim of Air Force member for costs incurred in reliance on erroneous advice furnished by Air Force officials that certain baggage could be shipped from Delaware to Spain at Government expense, is not a matter presenting such elements of unusual legal liability or equity which would justify reporting the claim to the Congress under the Meritorious Claims Act, 31 U. S. C. 236 (1970).

This action is in response to a letter from Staff Sergeant [REDACTED] USAF, [REDACTED] which constitutes an appeal of the February 22, 1978 settlement by our Claims Division, in which his claim for reimbursement of \$368.38 collected from him for a shipment of excess baggage was disallowed and it was further determined that his claim was not an appropriate matter for submission to the Congress under the Meritorious Claims Act.

Sergeant [REDACTED] was reassigned from Grand Forks Air Force Base (AFB), North Dakota, to Zaragoza Air Base (AB), Spain, in December 1974. In March 1975 he returned from Spain to the United States on leave for the purpose of marriage. After the wedding, he went back alone to his duty station in Europe. Orders were subsequently issued authorizing his wife to travel at Government expense on a space

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available basis during June 1975 from the United States to Spain. Although the member's wife was entitled to take along only 66 pounds of hand baggage under applicable regulations, personnel of the traffic management office at Dover AFB, Delaware, erroneously advised her that she was also entitled to ship 400 pounds of unaccompanied hold baggage. She then arranged to have 567 pounds of unaccompanied household goods shipped from Dover AFB to Zaragoza AB by the Government.

It appears that in October 1975 it was discovered that a mistake had been made, and the member was advised that he was liable to pay the entire cost of the unauthorized shipment made on his behalf. He protested. It was subsequently established that the member's wife had, in fact, been furnished with erroneous information, but by message dated November 24, 1976, the Air Force Accounting and Finance Center, Denver, Colorado, advised the Zaragoza AB accounting and finance office that the member was nevertheless obligated to pay the shipping charges, computed to be in the amount of \$368.38. By letter dated January 10, 1977, the Zaragoza AB accounting and finance office informed the member that it proposed to withhold such amount from his pay in installments during the following 6 months. In the letter the member was also advised of his right to request remission and cancellation of the debt. He did not submit such a request, however, and the \$368.38 was deducted from his pay.

On October 3, 1977, the member filed claim for reimbursement with the claims office at Beale AFB, California, his new permanent duty station. In the claim he contended, in essence, that he should not have been held liable to pay for the mistakes made by others. Air Force authorities denied the claim, but forwarded the matter to this Office for consideration under the Meritorious Claims Act. In accompanying correspondence, Air Force accounting, claims, and judge advocate officers have expressed sympathy for the member and have suggested that he and his wife were misadvised not only about the household goods shipment, but also about requesting remission of the debt, although no details have been furnished as to the nature of the erroneous advice given on the question of remission.

As previously indicated, our Claims Division denied the member's claim for reimbursement and determined that the matter did not

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contain such elements of legal liability or equity as would warrant reporting it to the Congress under the Meritorious Claims Act. In his letter of appeal, the member has questioned the correctness of those determinations.

With respect to the member's claim for reimbursement of charges for the household goods shipment, it is to be noted that the member was not entitled to have the goods shipped at Government expense. Thus, since the shipment was initiated on his behalf and for his benefit, he incurred a lawful obligation to pay for it. It matters not that his wife was given erroneous information, or that she may have canceled the shipment had she known payment might be required. In this connection, this Office and the courts of the United States have long followed the rule that in the absence of specific statutory authority the Government is not liable for the negligent or erroneous acts of its officers, agents, or employees, even though committed in the course of their official duties; hence, the receipt of information later established to be erroneous by one dealing with a Government official does not afford a legal basis for a payment from appropriated funds. See 56 Comp. Gen. 943 (1977); Federal Crop. Insurance Corporation v. Merrill, 322 U. S. 380 (1947); Posey v. United States, 449 F. 2d 228, 234 (1971); and Parker v. United States, 198 Ct. Cl. 661 (1972). It is our view that the member did not gain any entitlement to have the household goods shipped at Government expense simply because his wife was misadvised in the matter, and his claim for reimbursement of the shipping charges is therefore not proper for payment.

The member's indebtedness arising from the household goods shipment could have been considered for remission or cancellation by the Secretary of the Air Force under 10 U. S. C. 9837(d) (1976), which provides as follows:

"(d) If he considers it in the best interest of the United States, the Secretary may have remitted or cancelled any part of an enlisted member's indebtedness to the United States or any of its instrumentalities remaining unpaid before, or at the time of, that member's honorable discharge."

However, the member apparently did not apply for remission in January 1977, and he is not now eligible under the statute since no part of his indebtedness remains unpaid.

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The debt may not be considered for waiver under 10 U.S.C. 2774 (1976) since it arose out of an erroneous transportation payment which is not covered by that waiver authority.

With respect to the question of reporting this matter to the Congress with a recommendation that special legislation be enacted for the member's relief, the Meritorious Claims Act of 1928, codified as 31 U.S.C. 236 (1970), provides as follows:

"When there is filed in the General Accounting Office a claim or demand against the United States that may not lawfully be adjusted by the use of an appropriation theretofore made, but which claim or demand in the judgment of the Comptroller General of the United States contains such elements of legal liability or equity as to be deserving of the consideration of the Congress, he shall submit the same to the Congress by a special report containing the material facts and his recommendation thereon."

It has been the consistent position of this Office that the procedure provided by the Meritorious Claims Act is an extraordinary one, and its use is limited to extraordinary circumstances. The cases reported for the consideration of the Congress generally involve equitable circumstances of an unusual nature which are unlikely to constitute a recurring problem. We are aware of other cases of members incurring debts in circumstances similar to this case. We do not believe that Sergeant [REDACTED] case presents such elements of unusual legal liability or equity which would justify reporting the claim to the Congress for its consideration under the Meritorious Claims Act.

Accordingly, the February 22, 1978 settlement of our Claims Division disallowing Sergeant [REDACTED] claim is sustained.

  
Deputy Comptroller General  
of the United States

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Military personnel

Reimbursement

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