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DECISION



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

FILE: B-195167

DATE: October 12, 1979

MATTER OF: James A. Schultz - Forest Service - ^{Request for} Waiver of overpayment of travel and relocation expenses]

DIGEST: Employee of Postal Service hired by Forest Service was erroneously authorized and reimbursed for travel and relocation expenses instead of travel and transportation expenses as new appointee to manpower shortage position. Employee must repay amounts erroneously paid since overpayments of travel and relocation expenses may not be waived under 5 U.S.C. § 5584; there is no basis for compromise or termination of collection action under Federal Claims Collection Act; and Government is not estopped from repudiating erroneous advice or authorizations of its agents.

Mr. David L. ³⁴Oléxer, an Authorized Certifying Officer for the Forest Service, U.S. Department of Agriculture (USDA), has asked this Office not to take exception to that agency's overpayment of travel and relocation expenses in the case of Mr. James A. Schultz. For the reasons set forth below, we must deny the requested waiver action.

The issues presented for our resolution here involve the following pertinent facts. Mr. Schultz was authorized full transfer of station benefits upon his transfer of employment from the United States Postal Service (Postal Service), Des Moines, Iowa, to the Eastern Regional Office, Forest Service, Milwaukee, Wisconsin, effective July 15, 1978. (Subsequent administrative review determined that Mr. Schultz was only entitled to reimbursements of \$1,894.06 for his transfer as a new appointee to a manpower shortage position, not the amount of \$7,774.17 paid to him. The resulting \$5,880.11 difference represents an erroneous overpayment of travel and relocation expenses.)

In support of the request for waiver in the present case the Forest Service urges our consideration of the following additional facts:

"The Forest Service, Eastern Region, Milwaukee, first became aware that U.S.P.S. Postal Service employees

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transferring in were not eligible for relocation benefits when Comptroller General Decision B-189778 dated December 4, 1978, was reviewed in February 1979. Our letter of commitment to Mr. Schultz, the travel authorization dated April 20, 1978, and the reimbursements were made in good faith. We believed that this employee transferring into the agency without a break in service within the Civil Service System was certainly eligible for reimbursement.

Had the basic working manuals and regulations used on a daily basis by our employees presented any reasonable clue to a possible ineligibility by statute, we would have promptly referred the matter to our Regional Counsel for a legal interpretation. Unfortunately, none of the agencies concerned in this matter appear to have properly implemented the Statute through adequate instructions or guidance."

In reasoning that repayment of relocation benefits under the circumstances presented would be an extreme hardship to the employee and appear to be unconscionable, the Forest Service's submission concludes with the following recommendation:

"Your office, in the past, has determined not to take exception to payments made nor to require reimbursement under various hardship conditions. We ask that you take exception to our agency's administrative decision in this case not to undertake action for repayment."

In our decision in Matter of Postal Service Employees, 58 Comp. Gen. 132 (1978) (B-189778, December 4, 1978), we held that an employee who transfers from the Postal Service to an Executive agency is not eligible for reimbursement of relocation expenses. While not stated therein that decision involved our first construction of 5 U.S.C. § 104, as amended by the Act of August 12, 1970, Pub. L. 91-375, § 6(c)(2), 84 Stat. 775. The amended statute excludes the Postal Service from the definition of "Executive agency" and, therefore, its employees who transfer to Executive agencies are considered analogous to new employees and not entitled to the relocation expenses of transferred employees.

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In view of the original construction of 5 U.S.C. § 104, as amended, it is applicable to payments made before December 4, 1978, the date of 58 Comp. Gen. 132, supra. 39 Comp. Gen. 455 (1955).

In view of the above under the applicable statutes and governing regulatory authority, Mr. Schultz was entitled only to reimbursement under 5 U.S.C. § 5723 in the total amount of \$1,894.06. The resulting erroneous overpayment in the amount of \$5,880.11, constitutes a valid debt which Mr. Schultz owes to the account of the United States, and recovery is required absent any legal authority for waiver of the debt under the provisions of 5 U.S.C. § 5584, and absent grounds for compromise or termination of collection action by the Forest Service under the authority provided in 31 U.S.C. § 952(b). See Matter of Dr. Brian J. Battersly, B-180674, April 2, 1974, and B-180674, November 25, 1974.

Certain claims of the United States involving erroneous payments of pay may be waived under the following provisions of 5 U.S.C. § 5584:

(a) A claim of the United States against a person arising out of an erroneous payment of pay or allowances, other than travel and transportation expenses and allowances and relocation expenses payable under section 5724a of this title, on or after July 1, 1960, to an employee of an agency, the collection of which would be against equity and good conscience and not in the best interests of the United States, may be waived in whole or in part * * * (Emphasis added.)

Clearly, the exercise of such statutory authority by the Comptroller General is specifically precluded in the consideration of Mr. Schultz's case because the overpayment in question involved "travel and transportation expenses and allowances and relocation expenses payable under section 5724a of title 5 of the United States Code. See also 4 C.F.R. § 91.2(c) (1978). Therefore, there is no legal authority upon which Mr. Schultz's debt may be waived.

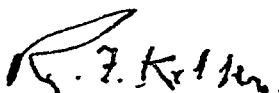
Under section 952(b) of the Federal Claims Collection Act of 1966, 31 U.S.C. 951, et seq., the head of an agency is

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authorized to compromise a claim or to terminate or suspend collection action under certain prescribed conditions. However, where there is a present or prospective ability to pay on the debt such as Mr. Schultz's continued employment, collection must be attempted. See Matter of Robert F. Granico, B-189701, September 23, 1977, and cases cited therein. This is especially true in Mr. Schultz's case where he is employed by the Government and the overpayment may be collected by setoff pursuant to 5 U.S.C. § 5514. See 4 C.F.R. § 102.3 (1978).

It is unfortunate that Mr. Schultz as a shortage category employee was erroneously authorized allowances which are statutorily conferred only upon transferred employees, and that he was erroneously advised that he would be entitled to reimbursement for his travel and relocation expenses which were not properly allowable to him under applicable laws and regulations. However, it is a well-settled rule of law that the Government cannot be bound beyond the actual authority conferred upon its agents by statute or by regulations, and this is so even though the agent may have been unaware of the limitations on his authority. See Matter of M. Reza Fassihi, 54 Comp. Gen. 747 (1975) and cases cited therein. The Government is not estopped from repudiating advice given by one of its officials if that advice is erroneous, and any payments made on the basis of such erroneous advice or authorization are recoverable. Matter of Joseph Pradarits, 56 Comp. Gen. 131 (1976); W. Penn. Horological Inst., Inc. v. United States, 146 Ct. Cl. 540.

Accordingly, the overpayment to Mr. Schultz may not be waived and payments to him in excess of his authorized statutory entitlement should be recovered.


Deputy Comptroller General
of the United States