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The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Rebecca T. Zagriniski -- Waiver of Relocation
Expenses
File: B-224850
Date: September 10, 1987

DIGEST

Agency erroneously authorized certain relocation expenses and the error was discovered after the employee had incurred the expenses but before the voucher was paid. The newly amended waiver statutes do not authorize waiver in cases where no payment has been made. Nothing in the statute, either before or after its amendment modifies or abrogates the rule that the Government is not liable for the erroneous advice of its agents. The statute and its legislative history demonstrate that Congress intended waiver authority to apply only to cases in which an erroneous payment has already been made.

DECISION

This is in response to a request for a decision concerning the claim of Rebecca T. Zagriniski for reimbursement of relocation expenses.^{1/} Ms. Zagriniski was erroneously authorized certain relocation expenses and the error was not discovered until after she incurred the expenses and submitted a voucher for payment. The agency asks if reimbursement may be made based upon the newly amended waiver statute which permits waiver of erroneous payments of travel, transportation and relocation expenses and allowances. We find that waiver may not be granted where the error was discovered prior to the agency making an erroneous payment and, thus, there is no claim against Ms. Zagriniski to waive.

FACTS

Rebecca T. Zagriniski, MPH, Ph.D., a resident of Newtown, Pennsylvania, was appointed as a new appointee at the

^{1/} This request is from Mary M. McNamara, Chief, Administrative Law Branch, Business and Administrative Law Division, Office of the Secretary, Department of Health and Human Services.

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Centers for Disease Control, Public Health Service, Department of Health & Human Services (HHS), Atlanta, Georgia, under special statutory provisions applicable to the Visiting Scientist Program. By travel order dated October 25, 1985, she was authorized travel expenses for herself, her spouse and her child, transportation of household goods, temporary storage, temporary quarters, residence transaction expenses, and miscellaneous expense allowance.

Sometime after December 27, 1985, Ms. Zagriniski submitted an undated voucher claiming travel expenses for herself and her family (\$534.10), temporary quarters subsistence expenses for the period October 27 to December 27, 1985 (\$1,099.09), expenses for the sale of a residence (\$5,941.82), expenses for the purchase of a residence (\$842.15), and miscellaneous expenses (\$700.00), for a total of \$9,117.16.2/

Prior to making payment, the agency determined that under applicable regulations, 42 C.F.R. 61.37(b), Ms. Zagriniski as a new appointee under the Visiting Scientist Program should have been authorized only travel and transportation expenses for herself and her family, and transportation of household goods. Thus, only her claim for \$534.10 for travel expense was properly authorized, and the remaining items totaling \$8,583.06 were erroneously authorized. Both the agency and Ms. Zagriniski attest to the fact that Ms. Zagriniski had no knowledge of the error until after she had incurred the expenses, filed her claim and been informed of the error by the agency.

DISCUSSION

It appears that Ms. Zagriniski's appointment was made under 42 C.F.R. §§ 61.30-61.38, under which she was considered a civilian employee of the Public Health Service. As such the waiver statute applicable to her would be 5 U.S.C. § 5584. Prior to December 28, 1985, the waiver statutes, including 5 U.S.C. § 5584, authorized waiver only of erroneous

2/ Although transportation of household goods was properly authorized, the voucher submitted makes no claim for reimbursement of this item.

payments of pay and allowances.^{3/} These statutes permitted the liability of employees or members for erroneous payments of pay and allowances to be waived where collection would be against equity and good conscience and not in the best interest of the United States and where the employee or member seeking waiver has acted in good faith.

Each of these waiver statutes refers to waiver of claims which arise out of "an erroneous payment." Because the statutes specifically refer to waiver of an erroneous payment, we have long held that no waiver may be granted unless there has been a payment. If the employee or member is not in debt to the Government because of an erroneous payment, there is no claim to waive.^{4/}

On December 28, 1985, Public Law No. 99-224, 99 Stat. 1741-1742, was enacted. It amended the waiver statutes and extended the Comptroller General's waiver authority to include waiver of claims involving erroneous payments of travel, transportation and relocation expenses and allowances. As amended, Section 5584(a) of title 5, United States Code (Supp. III, 1985), now provides that:

"(a) A claim of the United States against a person arising out of an erroneous payment of pay or allowances made on or after July 1, 1960, or arising out of an erroneous payment of travel, transportation or relocation expenses and allowances, to an employee of an agency, the

^{3/} The waiver statutes are 5 U.S.C. § 5584, which was first enacted in 1968 and applies to civil service employees; and 10 U.S.C. 2774, applicable to members of the uniformed services, and 32 U.S.C. 3716, applicable to members of the National Guard. The latter two statutes, enacted in 1972, were patterned after 5 U.S.C. § 5584, and are construed similarly.

^{4/} Compare, Vincent T. Oliver, 59 Comp. Gen. 395, 397 (1980); Angel F. Rivera, 64 Comp. Gen. 86 (1984); Jeffrey Kassel, B-220734, September 24, 1986; Daniel F. Cejka, 63 Comp. Gen. 210 (1984); and E. Paul Tischer, 61 Comp. Gen. 292 (1982). But see, 52 Comp. Gen. 700 (1973); and 55 Comp. Gen. 109 (1975).

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.)

There is no language authorizing reimbursement of expenses incurred by the employee or member based upon erroneous advice. The statute clearly refers only to waiver of claims arising out of erroneous payments which have already been made.

We also note that the legislative history of Public Law 99-224 consistently refers to waiver of "erroneous payments" which must be collected back from employees; of waiver of an employee's "liability" to the Government, of the hardship caused by the need to require employees to make "substantial refunds," etc.^{5/} The legislative history also repeatedly emphasizes that the new authority to waive erroneous payments of travel, transportation and relocation expenses and allowances is to be applied on the same basis and pursuant to the same standards that apply to waiver of erroneous payments of pay and allowances.^{6/} Thus, we are aware of nothing in Public Law 99-224 or its legislative history which would suggest that Congress intended to depart from past precedent and authorize reimbursement in cases where there is no "claim of the United States" because the error was discovered before payment has been made.

It should also be noted that nothing in the language of Public Law 99-224, or in its legislative history suggests that Congress intended to modify or abrogate the rule that the Government is not liable for the erroneous advice or authorizations of its agents. It is well established that, absent specific statutory authorization, the Government is not liable for the erroneous acts of its officers or agents even though committed in the performance of their official

^{5/} See, H.R. Rep. No. 102, 99th Cong., 1st Sess. (May 15, 1985); reprinted in Vol. 3, 1985 U.S. Code Cong. & Ad. News 2659-2666; and Cong. Rec. S17095-S17096 (daily ed. December 6, 1985).

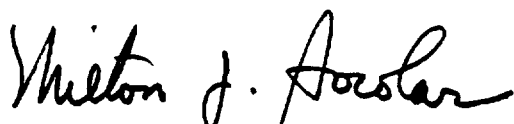
^{6/} Ibid.

functions.^{7/} Similarly, nothing in Public Law 99-224 or its legislative history suggests that Congress intended to modify or abrogate the principle that the Government is not estopped by the erroneous advice of its employees.^{8/}

CONCLUSION

Given the clear language of the statute and its legislative history, we must conclude that there is no authority to grant waiver in cases where no payment has been made, that is, waiver is available only where an erroneous payment has already been made by the Government.

Accordingly, the claim of Ms. Zagriniski for temporary quarters subsistence expenses, expenses for the sale of a residence, expenses for the purchase of a residence and for miscellaneous expenses is denied.

for 
Comptroller General
of the United States

^{7/} Reza Fassihi, 54 Comp. Gen. 747 (1975); Dr. Frank A. Peak, 60 Comp. Gen. 71 (1980); Riva Fralick, 64 Comp. Gen. 472 (1985); Jay L. Haas, B-215154, November 29, 1984; Hernan Rosado and Sonia M. Terron, B-216343, March 4, 1985; Dorcas Terrieu, B-218675, October 31, 1985.

^{8/} William J. Elder and Stephen M. Owen, 56 Comp. Gen. 85 (1976); Schweiker v. Hansen, 101 S. Ct. 1468 (1981).