

Kutzenberger



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Dr. Joseph M. Wells - Waiver - Erroneous Travel Advance

File: B-230868

Date: November 16, 1988

DIGEST

An appointee to a manpower shortage position was issued travel orders erroneously authorizing reimbursement of certain relocation expenses not available to an appointee. After he incurred expenses in reliance on the erroneous orders, the error was discovered. The employee's legitimate expenses were applied against the travel advance, and he was indebted to the government for \$1,250.03. The indebtedness is waived under 5 U.S.C. § 5584 (Supp. IV 1986) since the travel advance was made to cover the expenses erroneously authorized and the employee actually spent the travel advance in good faith reliance on the erroneous travel orders.

DECISION

Colonel J. F. Brown, Director of Centralized Pay Operations for the Army Finance and Accounting Center, forwards the claim of Dr. Joseph M. Wells for waiver of indebtedness. Dr. Wells had been advanced \$1,250.03 in excess of his entitlement to travel and relocation allowances.^{1/} For the reasons stated below, we grant waiver of this indebtedness.

BACKGROUND

The Civilian Personnel Office of the Army issued Dr. Wells travel orders dated June 11, 1986, amended August 29, 1986, specifically authorizing the following expenses in connection with his appointment to the U.S. Army Materials

^{1/} Although the agency submission uses a figure of \$1,252.83 as the amount at issue, we believe that amount is incorrect since the travel advance shown on the orders (\$5,587.20) minus the allowable expenses shown on the voucher (\$4,337.17) is \$1,250.03.

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Technology Laboratory in Watertown, Massachusetts: round-trip travel expenses to seek permanent residence; temporary quarters subsistence expenses; miscellaneous relocation expenses; real estate expenses; and unexpired lease expenses. Dr. Wells was also given a travel advance in the amount of \$5,587.20, and he was told by the Army to proceed with his move, utilizing his own funds when necessary, which would be refunded.

In October 1986, Dr. Wells was told that his orders had been improperly issued, and that the orders should have been for a first duty station move in a manpower shortage position. Dr. Wells was then told, after he had incurred the expenses for his move, that the expenses listed above were not authorized.

According to the voucher submitted by Dr. Wells and processed by the agency on June 10, 1987, Dr. Wells had legitimate expenses in the amount of \$4,337.17 and erroneously authorized expenses in the amount of \$2,625.72. The agency applied the amount of the legitimate expenses against the amount of the travel advance and considered the excess amount due the government as an erroneous payment appropriate for waiver consideration.

The agency recommends waiver in this case since Dr. Wells proceeded with his change of station in good faith, not realizing he had been misinformed, and since both verbal and written orders substantiated his inquiries concerning his entitlements. The agency investigative report concluded that no fraud, misrepresentation, fault or lack of good faith can, in any way, be assumed or inferred on Dr. Wells's part.

OPINION

The waiver statute, 5 U.S.C. § 5584 (Supp. IV 1986), permits waiver of overpayments of pay or allowances where collection would be "against equity and good conscience and not in the best interests of the United States" and where there is no indication of "fraud, misrepresentation, fault, or lack of good faith" on the part of any person having an interest in obtaining a waiver of the claim. Under amendments to 5 U.S.C. § 5584, enacted by Public Law 99-224, approved December 28, 1985, 99 Stat. 1741, waiver authority now extends to erroneous payments of travel and transportation expenses.

We have held a travel advance payment to be erroneous and subject to waiver to the extent it was made to cover the expenses erroneously authorized and the employee actually

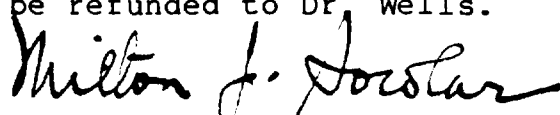
spent the advance in reliance on the erroneous travel orders. Major Kenneth M. Dieter, B-226842, June 28, 1988, 67 Comp. Gen. ____; Rajindar N. Khanna, B-225263, June 28, 1988, 67 Comp. Gen. _____. However, waiver is only appropriate to the extent that an employee is indebted to the government for repayment of the amounts advanced. So, for example, if an employee has both legitimate expenses and expenses which should not have been authorized, the travel advance must first be applied against the legitimate expenses. Any outstanding amount of the advance may then be applied against the erroneously authorized expenses and that amount could be considered for waiver. See Khanna, supra.

In this case, the Army correctly applied the advance of \$5,587.20 against the legitimately authorized expenses of \$4,337.17. As a result, there remains a balance of \$1,250.03 owed by Dr. Wells. It is that amount which is appropriate for waiver consideration.

Therefore, we consider the travel advance payment which Dr. Wells received to be erroneous and subject to waiver to the extent that it was made to cover the expenses erroneously authorized and incurred by Dr. Wells in detrimental reliance on the erroneous orders. Specifically, the erroneous expenses Dr. Wells incurred were for temporary quarters, miscellaneous expenses, and househunting expenses in connection with his change of station. As a general rule, we presume that expenses incurred in accordance with erroneous orders were made in reliance on those orders. See Dieter, supra. It appears reasonable in this case to assume that Dr. Wells did rely on the erroneous authorization in incurring the specific expenses claimed.

Further, the record is clear that Dr. Wells proceeded in good faith in incurring the erroneously authorized expenses. The agency notes that the moving expenses initially authorized in Dr. Wells's travel orders were normal for someone in Dr. Wells's position and profession. Therefore, it was reasonable for Dr. Wells to proceed in reliance on the erroneous orders since he believed them to be proper.

Accordingly, repayment of the erroneous amount advanced to Dr. Wells, \$1,250.03, is hereby waived. The Army should review its calculations and make any necessary corrections. Any amounts which have been collected in this regard should be refunded to Dr. Wells.

for 
Comptroller General
of the United States