



The Comptroller General
of the United States

Washington, D.C. 20548

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Decision

Matter of: Thomas L. Chapman - Waiver - Relocation Expenses
File: B-230880.2
Date: October 27, 1989

DIGEST

Waiver is granted for an erroneous payment of relocation expenses where the employee relied on the agency's misinterpretation of the applicable relocation regulations and where there is no indication of fraud, misrepresentation, fault or lack of good faith on the part of the employee.

DECISION

This responds to a request from Mr. Paul R. Gentile, Financial Manager, Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury, for a decision regarding the request by Mr. Thomas L. Chapman for waiver of collection of relocation expenses erroneously paid to him in connection with his transfer to a new duty station. For the reasons discussed below, we grant waiver.

BACKGROUND

This decision follows up on our previous decision in Thomas L. Chapman, B-230880, Dec. 12, 1988, in which we held that Mr. Chapman was not entitled to reimbursement of expenses incurred in the sale of his residence at his former duty station since settlement did not occur until more than 3 years after the date he actually reported to his new duty station. Since the agency erroneously reimbursed Mr. Chapman for these real estate expenses, we informed Mr. Chapman of the procedures involved in pursuing a request for waiver of collection of this erroneous payment.

Mr. Chapman's transfer from Asheville, North Carolina, to Buffalo, New York, occurred in 1983. His reporting date was tentatively set for September 25, 1983, but due to his taking some annual leave, Mr. Chapman did not actually report for duty at his new station until October 13.

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For reasons that are not entirely clear, his travel authorization approving his transfer was not issued until November 1, 1983.

Because he was having difficulty selling his former residence in Asheville, North Carolina, Mr. Chapman requested and was granted on September 17, 1985, a 1-year extension of the time period for real estate expenses. During the 1-year extension, Mr. Chapman sought advice from ATF officials concerning his time limitation, and he was advised that, because his travel authorization was not issued until November 1, 1983, he had until November 1, 1986, to settle on the sale of his house. The agency does not deny that these statements were made. Mr. Chapman states that, relying on this information, he waited until October 31, 1986, to settle on the sale of his former residence.

The agency reimbursed Mr. Chapman for expenses incurred in the sale of his residence in the amount of \$4,021.40, but, as noted above, we held that the payment was erroneous because the expenses were incurred more than 3 years after his actual reporting date of October 13, 1983.

Mr. Chapman now requests waiver of the collection of this debt based on the erroneous advice given to him regarding his time limitation and his reliance on that advice. The agency recommends denying waiver because they believe Mr. Chapman knew, or should have known, his obligations under the real estate expenses provisions of the Federal Travel Regulations.

OPINION

Section 5584 of title 5, United States Code, was amended by Public Law 99-224, 99 Stat. 1741 (1985), to permit waiver of erroneous payments of travel and transportation or relocation expenses and allowances 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. In order for waiver to be granted, there must be no indication of fraud, misrepresentation, fault or lack of good faith on the part of the employee. 5 U.S.C. § 5584(b)(1) (1982).


According to the legislative history of Public Law 99-224, waiver authority was extended to erroneous payments of travel, transportation and relocation expenses because holding an employee to a standard of constructive knowledge of complex regulations in certain instances is unreasonable, particularly when even those charged with administering the

regulations make mistakes in determining an employee's entitlement. H.R. Rep. No. 99-102, 99th Cong, 1st Sess. 2 (1985).

In this case, there was a great deal of confusion and misinterpretation on the part of agency officials concerning the date by which Mr. Chapman was required to settle on the sale of his residence in order to be entitled to reimbursement. Apparently, certain agency officials were advising Mr. Chapman that the correct date was November 1, 1986, based on the date of his travel authorization, while other agency officials believed the correct date was September 25, 1986, based on the tentative date set for Mr. Chapman to report for duty at his new station. In light of this, we do not believe it is reasonable to conclude, as ATF has, that Mr. Chapman knew or should have known what his obligations were under the Federal Travel Regulations.

In addition, we find no indication of fraud, misrepresentation, fault, or lack of good faith on the part of the employee. Rather, we find the erroneous payment to be a result of the agency's misinterpretation of the applicable provisions of the Federal Travel Regulations. For these reasons, we believe it would be against equity and good conscience and not in the best interests of the United States to collect this debt.

Accordingly, repayment of the erroneous amount paid to Mr. Chapman, \$4,021.40, is waived. The agency shall repay all amounts already collected from Mr. Chapman on this debt and fully release him from any further collection.

for 
Comptroller General
of the United States