

*Ratzinger*



**The Comptroller General  
of the United States**

Washington, D.C. 20548

## **Decision**

**Matter of:** John B. Osborn III - Waiver - Erroneous Travel Advance  
**File:** B-231146  
**Date:** March 10, 1989

### **DIGEST**

An appointee to a manpower shortage position was issued orders erroneously authorizing reimbursement of temporary quarters subsistence expenses and was given a travel advance. After he incurred expenses in reliance on the erroneous orders the error was discovered. Repayment of the travel advance is waived under 5 U.S.C. § 5584, as amended, since the advance was made to cover the expenses erroneously authorized and the employee actually spent the advance in good faith reliance on the erroneous travel orders.

### **DECISION**

The Director of the Department of the Treasury Federal Law Enforcement Training Center, Glynco, Georgia, forwards the claim of Mr. John B. Osborn III, for waiver of his indebtedness. Mr. Osborn had been erroneously advanced \$1,400 for temporary quarters subsistence expenses to which he was not entitled. For the reasons stated below, we grant waiver of this indebtedness.

### **BACKGROUND**

Mr. Osborn was selected for a position at the Training Center that was in a manpower shortage category. He was notified by letter dated November 6, 1987, that he was selected and that the government would pay authorized relocation expenses.

A Travel and Transfer Authorization Form dated November 8, 1987, was incorrectly completed by the Training Center's Budget and Finance Division approving temporary quarters subsistence expenses to which Mr. Osborn was not entitled. Based on the incorrect authorization, the Training Center advanced Mr. Osborn \$1,400 on November 23, 1987.

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When the error was discovered, Mr. Osborn was notified by letter dated December 15, 1987, and a corrected Travel and Transfer Authorization Form was completed.

According to the voucher submitted by Mr. Osborn, he incurred temporary quarters subsistence expenses in the total amount of \$1,560.48 from November 14 through December 13, 1987. The agency recommends waiver of the travel advance in this case since Mr. Osborn incurred these expenses in reliance on the erroneous orders, the error was completely the fault of the Training Center, and Mr. Osborn did not contribute to the mistake.

#### OPINION

Under the authority of 5 U.S.C. § 5584, overpayments of pay or allowances may be waived where collection would be "against equity and good conscience and not in the best interest of the United States" and 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 section 5584, enacted by Public Law 99-224, approved December 28, 1985, 99 Stat. 1741, this waiver authority was extended 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. \_\_\_\_\_. Further, 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, above.

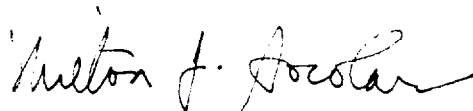
In Khanna, supra, the agency did not identify which relocation expenses the travel advance was intended to cover, and therefore we first applied the entire travel advance against the legitimately authorized expenses to determine if there was any net indebtedness. In the present case, the \$1,400 travel advance was given to Mr. Osborn solely for the erroneously authorized temporary quarters subsistence expenses. The agency has settled a separate voucher submitted by Mr. Osborn for travel expenses incurred

on November 11-13, 1987, for his trip to his new duty station, so there are no legitimately authorized expenses to apply against the advance. Therefore, we consider the travel advance payment which Mr. Osborn received to be erroneous and subject to waiver since it was made to cover the expenses erroneously authorized and incurred by Mr. Osborn in detrimental reliance on the erroneous order.

As a general rule, we presume that expenses incurred in accordance with erroneous orders were made in reliance on those orders. See Dieter, supra, and Khanna, supra. It appears reasonable in this case to assume that Mr. Osborn did rely on the erroneous authorization in incurring the temporary quarters subsistence expenses claimed.

Further, there is nothing in the record to indicate any fraud, misrepresentation or fault on Mr. Osborn's part. Rather, it was reasonable for Mr. Osborn to proceed in reliance on the erroneous order since he had no reason to believe it was improper.

Accordingly, repayment of the erroneous amount advanced to Mr. Osborn is hereby waived.



**Acting** Comptroller General  
of the United States