Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Reginald Cutter—Temporary Quarters Subsistence Expenses

File: B-260765

Date: December 14, 1995

DIGEST

1. A transferred employee who rented the house he eventually purchased is not entitled to temporary quarters subsistence expenses (TQSE) for the rental period. The record shows that the residence was offered to the employee for "rent or purchase"; that the employee rented it pending arrangements to sell his old house and seek financing; and that, while the employee continued to look at other houses during the rental period, he did so as a precaution in the event he was unable to purchase the house. These facts support the agency's determination that the employee moved into the house with the intention of occupying it permanently.

2. A transferred employee was given an advance of travel funds which included funds for TQSE. The employee became indebted for TQSE because he failed to meet the legal requirements for payment of those expenses, and not because of an erroneous authorization. Therefore, the advance for TQSE does not constitute an erroneous payment subject to waiver under 5 U.S.C. § 5584 (1994).

3. A transferred employee was erroneously authorized relocation expenses for his aunt and 22-year-old daughter, and was given an advance for those expenses. It appears that the employee spent the advance in reliance on the erroneous orders and, consequently, his indebtedness is subject to waiver. The case is remanded to the agency for computation of the debt that may be waived.

DECISION

Mr. Reginald Cutter, a civilian employee of the Department of the Army, appeals our Claims Group settlement, Z-2869511, Feb. 8, 1995. The settlement denied a portion of Mr. Cutter's temporary quarters subsistence expenses (TQSE), and disallowed relocation expenses for Mr. Cutter's aunt and 22-year-old daughter. We affirm our Claims Group's determination, and hold that Mr. Cutter's indebtedness for TQSE is not subject to waiver. However, since the employee spent funds advanced for his aunt's and daughter's relocation expenses in reliance on erroneous orders, his indebtedness for those expenses may be waived.

BACKGROUND

Mr. Cutter was authorized relocation expenses, including 60 days' temporary quarters subsistence expenses (TQSE), for his transfer from the Sacramento (California) Army Depot to a position with the Department of the Navy in Norfolk, Virginia. The travel orders authorizing relocation expenses for Mr. Cutter's family erroneously included his aunt and 22-year-old daughter.

Upon arriving in Norfolk on July 27, 1993, Mr. Cutter and his family moved into a hotel. On August 18, 1993, the Cutters moved into a house at 200 Marsh Quay in Chesapeake, Virginia, and entered into a lease for a month-to-month rental ending on December 15. Mr. Cutter states that:

> "The property known as 200 Marsh Quay was available for rent or purchase. The property was accepted for rent or purchase, contingent on the sale of property in Sacramento and securing financing, Aug. 93. We accepted the offer of renting, but did not accept household goods because there was no guarantee of our California property being sold immediately, and being able to secure financing for purchase in Virginia . . . " [Emphasis added.]

Mr. Cutter states that he rented furniture for the house and continued to keep his household goods in storage. He further states that the house was never taken off the market, and that twice during the rental period he was given 30-day notices to vacate the house because other parties had expressed interest in buying it. Also, Mr. Cutter states that he and his family continued to look at other houses during the rental period. A letter from Mr. Cutter's realtor states that he continued to show the Cutter's other houses from August to December 1993, "in case our contingency contract fell through on 200 Marsh Quay."

On October 20, 1993, the agency extended Mr. Cutter's TQSE eligibility for another 60 days. On November 1, 1993, Mr. Cutter signed a contract for the purchase of the Marsh Quay house, which was contingent on the sale of his old residence and his ability to secure financing. He settled on the contract on December 13, 1993.

The agency denied Mr. Cutter TQSE for the period he was renting the house, finding that he had not demonstrated an intention to occupy it on other than a permanent basis. In addition, the agency denied all expenses for Mr. Cutter's aunt and 22-year-old daughter because they did not qualify as eligible dependents for relocation expense purposes. As a result, the agency determined that Mr. Cutter was indebted for $17,195, the amount by which his travel advance exceeded his allowable expenses.

The Defense Finance and Accounting Service, and subsequently our Claims Group, agreed with the agency and disallowed Mr. Cutter's claims. Mr. Cutter now appeals the denial of TQSE and requests that we consider waiving those expenses, as well as the relocation expenses that were erroneously authorized for his aunt and daughter.

OPINION

Temporary Quarters Subsistence Expenses

A transferred employee may be allowed subsistence expenses when the occupancy of temporary quarters is determined to be necessary. 5 U.S.C. § 5724a(a)(3) (1994); Joint Travel Regulations (JTR), vol. 2, chapter 13. The JTR further provides that:

> "[O]ccupancy of temporary quarters that eventually become the employee's permanent residence shall not prevent payment of temporary quarters allowance if the employee shows satisfactorily that the quarters occupied were intended initially to be only temporary. In making this determination, the DOD [Department of Defense] component concerned should consider factors such as: the duration of the lease, movement of household goods into the quarters, type of quarters, expressions of intent, attempts to secure a permanent dwelling, and the length of time the employee occupies the quarters." 2 JTR para. C13000.

By its terms, the JTR commits to the agency's judgment determinations of whether an employee has provided satisfactory evidence of an intent to occupy quarters on only a temporary basis. The agency's determination that the evidence is insufficient to show such an intent will not be overturned by our Office unless it lacks any reasonable basis in the record and thus constitutes an abuse of discretion. Richard A. Alschuler, 71 Comp. Gen. 389 (1992); Roland R. Leaton, B-261168, July 18, 1995.

In this case, the agency appears to have made an appropriate determination based on the factors cited in the regulations. While Mr. Cutter rented the house on a short-term, month-to-month basis, the record suggests that at the time he began renting the house in August 1993 he was also contemplating its purchase. As noted previously, Mr. Cutter states that he "accepted [the house] for rent or purchase, contingent upon the sale of property in Sacramento and securing financing, Aug. 93." Further, the statement from Mr. Cutter's realtor indicates that he continued to show houses to the Cutters from August to December 1993 as a precaution, in the event they were unable to purchase the Marsh Quay house.

The fact that Mr. Cutter received 30-day notices to vacate the house does not, in our view, change the nature of his occupancy, particularly since there is no evidence that he moved out in response to the notices. Furthermore, while Mr. Cutter continued to keep his household goods in storage, the absence of household goods does not in itself show an intention to reside in quarters temporarily. See, e.g., Stephen A. Webb, B-211004, May 23, 1983 ("[I]t is occupancy of the quarters, not their unrestricted or comfortable use, which is controlling."). Accordingly, we find no basis to disturb the agency's determination that Mr. Cutter was occupying permanent quarters from August 18 to December 13, 1993, and, therefore, he may not be allowed TQSE for that period.

As noted above, Mr. Cutter requests waiver of his indebtedness for the portion of his travel advance covering TQSE during the rental period. Under 5 U.S.C. § 5584 (1994), the Comptroller General may waive an employee's indebtedness for travel or relocation expenses only if the debt arises from an "erroneous payment." In this case, Mr. Cutter became indebted for TQSE because he failed to meet the legal and regulatory requirements for the payment of such expenses, and not because of any administrative error in the authorization of TQSE. Consequently, Mr. Cutter's indebtedness for TQSE did not arise from an erroneous payment and may not be considered for waiver. Sandra J. Samuels, B-226015, Apr. 25, 1988.

Relocation Expenses for Relatives

As noted previously, Mr. Cutter was erroneously authorized relocation expenses for his aunt and 22-year-old daughter. The applicable regulations allow such expenses only for an employee's immediate family members, which do not include aunts under any circumstances and include children over 21 years of age only if they "are physically or mentally incapable of self-support." 2 JTR app. D.

The fact that Mr. Cutter was erroneously authorized relocation expenses would not provide a basis for payment of a subsequent claim, since the government is not bound by the erroneous acts of its agents. Karla Heerman, B-260861, Aug. 8, 1995. However, since the agency is attempting to recoup the amounts it advanced to Mr. Cutter for these expenses, we may consider whether collection of the debt may be waived.

Under 5 U.S.C. § 5584, an employee's indebtedness for an erroneous payment of relocation expenses may be waived if collection "would be against equity and good conscience and not in the best interests of the United States" and there is no indication of "fraud, misrepresentation, fault, or lack of good faith" on the employee's part. As a general rule, we presume that an employee who incurs expenses erroneously authorized by travel orders has done so in reliance on those orders and, providing the claim meets the other criteria noted above, we will waive the resulting debt. Mary F. Lopez, B-236856, Dec. 15, 1989; Darlene Wyrick,

68 Comp. Gen. 462 (1989). In both of the cited cases, we waived debts resulting from travel orders erroneously authorizing relocation expenses for nondependent adult children.

In this case, we find that Mr. Cutter meets the requirements for waiver. There is nothing in the record to indicate that Mr. Cutter misled the agency as to the identities of either relative; in fact, the orders themselves clearly state the daughter's birth date and the aunt's relationship to the employee. Therefore, we may presume that Mr. Cutter incurred relocation expenses for his aunt and daughter in good faith reliance on his travel orders, and his resulting indebtedness may be waived.

While we conclude that waiver is appropriate in this case, the record does not permit a determination of the dollar amount that is subject to waiver. Accordingly, we are remanding the case to the agency for calculation of the amount of relocation expenses that Mr. Cutter would have been entitled to receive for his aunt and daughter had they qualified as members of his immediate family. If the amount is $1,500 or less, the agency may waive its collection pursuant to 5 U.S.C. § 5584; if it is higher, the matter should be returned to us for waiver.

Accordingly, we affirm our Claims Group's determination that Mr. Cutter is not entitled to TQSE for the period August 18 to December 13, 1993, and hold that his indebtedness for those expenses may not be waived. Mr. Cutter's indebtedness for relocation expenses incurred on behalf of his aunt and daughter is remanded to the agency for calculation of the amount subject to waiver.

/s/Seymour Efros
for Robert P. Murphy
General Counsel