



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: John Martino

File: B-262168

Date: May 24, 1996

DIGEST

The Claims Collection Act and 31 U.S.C. § 3702(a) provide GAO with jurisdiction over claims submitted by employees against whom liability has been assessed by their agencies. Our review is limited to a review of the agency's legal basis for assessing liability (i.e., the existence of statutory authority or appropriate regulations), whether the agency has followed the applicable statute and regulations, and whether the agency had a rational basis for assessing liability. Where the Panama Canal Commission found that the employee, a contracting officer, failed to comply with the Federal Acquisition Regulation requirement to conduct a market price study prior to extending a contract, a rational basis exists for assessing liability against him. Employee was provided notice and a hearing pursuant to 31 U.S.C. § 3716 and agency regulations. The Panama Canal Commission acted properly in using administrative offset procedures to set off his debt against his final salary payments and accumulated leave and is entitled to proceed through the Office of Personnel Management to collect the balance remaining against his Civil Service Retirement Fund account.

DECISION

This decision is in response to a letter from the attorney for John Martino concerning his indebtedness to the Panama Canal Commission (PCC). Mr. Martino is contesting the validity of an \$88,040 assessment of indebtedness on his part to the PCC.

BACKGROUND

The case stems from the 1991 extension authorized by Mr. Martino of the PCC's contract PC-1p-1903 for liquid chlorine. In January of 1994, the PCC Inspector General reported irregularities in the procurement and the PCC subsequently found that Mr. Martino was obligated to pay the agency the sum of \$88,040 as reimbursement for the unnecessary expenditure of commission funds for which he was alleged to be responsible.

Mr. Martino retired from the PCC effective January 4, 1994. In March 1994, PCC sent Mr. Martino notice of his indebtedness. The PCC partially offset the debt against his final salary payments and accumulated leave and informed Mr. Martino that the offset was in accordance with the Federal Claims Collections Standards, 4 C.F.R. Part 102 (31 U.S.C. § 3716 (1994)). PCC is seeking the balance of the debt through administrative offset against monies due to Mr. Martino from the Civil Service Retirement and Disability Fund.

Mr. Martino claims that the offset against his salary was required to be conducted pursuant to 5 U.S.C. § 5514 (1994) and its implementing regulations found in 35 C.F.R. Part 256 which provide him the opportunity to question the validity of the debt by submitting a claim to our Office.

In response, the PCC asserts that GAO does not have jurisdiction over this matter. In a letter to our Office, the PCC reiterates its assertion that the offsets were commenced after Mr. Martino's retirement and that its action is therefore an administrative offset against a former employee under 4 C.F.R. Part 102, not a salary offset against a current employee subject to further proceedings under 35 C.F.R. Part 256.

ANALYSIS AND CONCLUSION

Under 31 U.S.C. § 3702(a) (1994) the Comptroller General has the authority to settle all claims of or against the United States Government, except those claims which are under the exclusive jurisdiction of administrative agencies pursuant to specific statutory authority. Our Office has recognized that the PCC has limited authority granted under the Panama Canal Act of 1979 to settle the claims arising against the government and the PCC relating to property damage and loss and personal injury or death arising from the operation of the waterway. Panama Canal Commission Liability and Settlement Authority on Claims, B-197052, Apr. 22, 1980. Our Office, however, has jurisdiction under 31 U.S.C. § 3702(a) of other claims by or against the PCC in the absence of any statutory authority granting jurisdiction to the PCC over such claims.

Our jurisdiction over Mr. Martino's claim does not depend on whether the collection is taken as a "salary offset" under 5 U.S.C. § 5514 or as an "administrative offset" under 31 U.S.C. § 3716. However, in light of Veterans Administration, 64 Comp. Gen. 907 (1985), we agree with PCC that the offset against Mr. Martino's final salary appropriately was made under the Federal Claims Collection Act, 31 U.S.C. § 3716, i.e., "administrative offset."

Turning to the merits of the dispute, we have limited our review of claims by agencies against employees to a review of the agency's legal basis for assessing liability (i.e., the existence of statutory authority or appropriate regulations) and

whether the agency has followed the applicable statute and regulations. We will not second-guess the agency's determination that a given set of facts constitutes negligence unless the agency's finding can be said to lack a rational basis. Walter C. Stephenson, 65 Comp. Gen. 177, 179-80 (1986).

The PCC assessed liability against Mr. Martino, the contracting officer, for failing to comply with the Federal Acquisition Regulation (FAR) requirement to conduct a market price study prior to extending a contract. FAR § 17.207. PCC also relied on its acquisition regulations, set out in 48 C.F.R. Part 35, which state that personal liability may be assessed against the individual who has made an unauthorized commitment of government funds. Panama Canal Commission Acquisition Rules (PAR) § 3501.602-3(b)(1).

The basis for assessing the debt against Mr. Martino was the lack of evidence that he conducted or relied upon any kind of market survey in signing the contract extension as required by regulation. PCC's Inspector General found substantial evidence to support the conclusion that the extension was made with the knowledge that it was not supported by fact and was contrary to law or regulation. In particular, the contract extension was for \$355/ton of liquid chlorine at a time when the producer price index was around \$200/ton at the point of origin and the contractor was paying \$165/ton to its supplier. The PCC concluded that since prices were considerably lower than the PCC was paying, Mr. Martino could not have conducted the required investigation of market prices prior to extending the contract. The PCC found that Mr. Martino's deliberate disregard of the FAR which required a market analysis made him responsible for the losses sustained by PCC as a result of his actions. Given the wide disparity in prices between what the PCC paid and what it might have paid for the commodity in question, we conclude that the PCC had a rational basis for the finding it reached.

In collecting the debt through administrative offset under 31 U.S.C. § 3716, the PCC proceeded in accordance with 4 C.F.R. Part 102. The procedural rights to which Mr. Martino was entitled included written notice of the nature and amount of the debt, notice of the agency's intention to collect the debt by offset, an opportunity to inspect and copy agency records pertaining to the debt, the opportunity to obtain review within the agency of the determination of indebtedness, and the opportunity to enter into a written agreement with the agency to repay the debt.

Our analysis of the record indicates that the PCC followed the applicable statute and regulations in administering the offset. Mr. Martino was provided notice of his indebtedness on March 2, 1994, PCC's intention to administratively offset the debt was provided in a June 14, 1994, letter to Mr. Martino; Mr. Martino was furnished documents on June 20, 1994; and a hearing was held with Mr. Martino present on October 18, 1994.

Given the limited scope of our review in this case, there is no relief our Office can grant Mr. Martino. As noted above, we conclude that the PCC had a rational basis for assessing liability against him. Moreover, it followed the applicable statute and regulations. Accordingly, the collection action taken through administrative offset was proper and the PCC may proceed through the Office of Personnel Management to collect on its claim against Mr. Martino's Civil Service Retirement and Disability Fund account.

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