

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548**

FILE: B-214596

DATE: August 29, 1984

MATTER OF: Dale C. Williams - Household Goods Shipping Expenses - Erroneous Advice

DIGEST:

1. Civilian employee of Department of Air Force transferred in October 1979 was erroneously advised and reimbursed for shipment of household goods in excess of applicable maximum weight limitation of 11,000 pounds for civilian employees under 5 U.S.C. § 5724(a) (1976). Employee must repay amount of excess weight charges since additional weight allowance provided by 37 U.S.C. § 406 (1976) applies only to members of the uniformed services, not to civilian employees.

2. Civilian employee erroneously advised and reimbursed for household goods shipping expenses must repay amounts erroneously paid since no Government agency or employee has the authority to waive a statutory provision, and the Government is not estopped from repudiating erroneous advice or authorization of its agents. Since Federal employees are appointed and serve only in accordance with statutes, relocation expenses are governed by statute, not by principles of contract law. The fact that agency officials erroneously authorized reimbursement of expenses does not prevent recoupment, since a payment not authorized by statute will not form the basis for estoppel against the Government.

3. The indebtedness of a civilian employee erroneously advised concerning his maximum weight allowance may not be considered for equitable

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waiver because excess weight charges incurred in the shipment of household goods are transportation expenses and are expressly precluded from the waiver provisions of 5 U.S.C. § 5584 (1982). And, where there is present ability to pay, collection of a debt must be attempted.

We are sustaining the October 13, 1983, adjudication of our Claims Group which determined that Mr. Dale C. Williams is indebted to the United States in the amount of \$350.98 for excess household goods shipping costs.

Mr. Williams, then a civilian employee of the Department of the Air Force, was officially transferred from Randolph Air Force Base, Texas, to Andrews Air Force Base, Maryland, in October 1979. The Air Force determined that Mr. Williams was responsible for shipping a net weight of 12,100 pounds, which was 1,100 pounds in excess of his 11,000 pound lawful limitation, and for which overage he owed the Government \$350.98. Mr. Williams appealed this determination which was forwarded to our Claims Group in December 1982. By its adjudication number Z-2845944, dated October 13, 1983, the Claims Group upheld the agency's assessment of overcharges against Mr. Williams, stating in part as follows:

"Mr. Williams contends that, on the basis of information given to him both verbally and in writing on the Air Force Personal Property Counseling Checklist prior to the transfer in question, he was entitled to shipment of 12,100 pounds at government expense. He has enclosed a copy of the checklist, which clearly bears the notation 11,000 + 10%. He has further cited the fact that Line Item No. 2 on the DD Form 139 dated May 7, 1982, on which the Air Force has computed his debt, indicates that a 10 percent allowance should be deducted for packing.

"It is unfortunate that the individual assigned by the Air Force to advise Mr. Williams of his rights and responsibilities prior to his transfer erred in his

counsel. It is equally unfortunate that, relying upon this erroneous counsel, Mr. Williams elected to move items which he had contemplated disposing of in order to eliminate any excess weight. In addition, the Air Force then reinforced Mr. Williams' belief that he was entitled to the 10 percent packing allowance by notifying him of his indebtedness on a form intended for use only in relation to military personnel, who are granted this allowance under Volume I, Chapter 8, of the Joint Travel Regulations.

"We regret that Mr. Williams has apparently incurred an indebtedness as the direct result of erroneous counsel from the Air Force representative officially assigned to provide such counsel. However, it is a well-established rule that, in the absence of specific statutory provisions, the United States is not liable for the negligent or erroneous acts of its officers, agents or employees, even though committed in the performance of their official duties (See Utah Power and Light v. United States, 243 U.S. 389)."

In bringing his appeal here Mr. Williams reasserts his contention that his actions were founded on the erroneous guidance he received from responsible Air Force travel officials and his indebtedness results from the erroneous authorization he received. This, Mr. Williams contends, makes the Air Force liable because principles of agency law require that "the Air Force has a fiduciary relationship with the counselor they have authorized to act in their behalf" and therefore the Air Force is liable for the acts authorized by their counselor. Additionally, Mr. Williams envisions that the costs of recouping this indebtedness will far exceed the debt amount itself, and therefore, he requests that the debt be waived.

The factual background giving rise to this claim is, indeed, unfortunate. However, the legal authorities applying to Mr. Williams' claim are precise and are not subject to modification or waiver by the General Accounting Office.

The entitlement authority applicable to Mr. Williams' case, section 5724(a)(2), title 5, United States Code (1976), established 11,000 pounds as the maximum weight for household goods transported by civilian employees being transferred at Government expense. The implementing regulations to that statute in effect at the time of Mr. Williams' travel were contained in paragraph 2-8.2(a) of the Federal Travel Regulations, FPMR 101-7 (May 1973), which repeated the 11,000 pound maximum weight allowance and stipulated in paragraph 2-8.4e(2) that the employee was responsible for excess weight. Mr. Williams was also subject to the regulations contained in Volume 2 of the Joint Travel Regulations, which is essentially a restatement and implementation of the Federal Travel Regulations, and concerns travel and transportation allowances of civilian employees of the Department of Defense.¹ Paragraph C8000 of Volume 2 of the Joint Travel Regulations in effect at the time of transfer prescribed the 11,000 pound allowance for civilian employees while paragraph C4353 provided that a civilian employee who exceeds the authorized weight allowance is required to pay the excess costs for the shipment.

Thus, the 11,000 pound weight limitation applicable to Mr. Williams' household goods shipment is statutory, and no Government agency or employee has the authority to permit - what the law does not allow - transportation of household goods in excess of that weight limitation. Therefore, regardless of the reasons for the shipment of the excessive weight of household goods, the law does not permit payment by the Government of charges incurred incident to shipment of the excess weight. See Fredric Newman, B-195256,

^{1/} In contrast, members of the uniformed services are entitled to expenses in connection with the transportation of household goods pursuant to the statutory authority contained in section 406 of title 37, United States Code. MEMBERS OF THE UNIFORMED SERVICES is Volume 1 of the two volumes comprising the Joint Travel Regulations. It contains basic regulations concerning travel and transportation allowances of members of the uniformed services, including all regular and reserve components thereof. When necessary, these regulations are supplemented by administrative regulations of the service concerned. In view of these qualifications, the provisions of Volume 1 of the Joint Travel Regulations may not be applied to the circumstances of Mr. Williams' claim. See Jack McGee, B-199303, August 22, 1980.

November 15, 1979; and John W. Murphy, B-186753, September 24, 1976. Accordingly, while it is unfortunate that Mr. Williams received erroneous advice as to his household goods shipping allowance which was not properly allowable to him under applicable statutory authority, payment on the basis of such erroneous advice may not be allowed.

This rule cannot be circumvented by invoking principles of contract law because an employee's entitlement to relocation expenses is governed by statute, not by principles of contract law. Since Federal employees are appointed and serve only in accordance with applicable statutes and regulations, the Federal employment relationship is a statutory rather than contractual one, and public employment does not give rise to a contractual relationship in the conventional sense. See Elder and Owen, 56 Comp. Gen. 85, at 88 (1976), and cases cited therein; and Kania v. United States, 227 Ct. Cl. 458, at 464-65, 650 F.2d 264, at 268, cert. denied, 454 U.S. 895 (1981). This point was also recently emphasized by the Court of Claims in Shaw v. United States, 226 Ct. Cl. 240, at 251, 640 F.2d 1254, at 1260 (1981).

We know of no case where an officer or agent of the Government has estopped or prevented the Government from enforcing a law passed by Congress. As the Court of Claims ruled in Montilla v. United States, 198 Ct. Cl. 48, at 64, 457 F.2d 978, at 986-87 (1972), "[U]nless a law has been repealed or declared unconstitutional by the courts, it is part of the supreme law of the land and no officer or agent can by his action or conduct waive its provisions or nullify its enforcement." Thus, the Government cannot be bound beyond the actual authority conferred upon its agents by statutes and regulations, and this is so even though the agent may have been unaware of the limitations on his authority. See Schweiker v. Hansen, 450 U.S. 785 (1981); and Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947).

Mr. Williams alleges that he relied on the erroneous advice given to him concerning the net weight limitation applying to his household goods shipment in 1979. However, as indicated above, an agency's erroneous actions may not serve as the basis for establishing a valid reimbursement entitlement. The Government is not legally bound by its mistakes, and no authority exists which would otherwise permit payment of the excess weight charges for which Mr. Williams remains indebted to the United States.

Finally, Mr. Williams requests that the Government suspend its efforts to collect the excess weight charges, or waive them altogether. The excess weight charges amounting to \$350.98 for household goods shipped in excess of the maximum weight allowance authorized by 5 U.S.C. § 5724(a), constitutes a valid debt which Mr. Williams owes to the account of the United States. Recovery of this debt is required unless there exist qualifying criteria for waiver of the debt under the provisions of 5 U.S.C. § 5584 (1982), or grounds for compromise or termination of the collection action by the cognizant Government agency under authority provided in 31 U.S.C. § 3711 (1982).

Certain claims of the United States arising out of erroneous payments of pay or allowances of civilian employees may be waived under the following provisions of 5 U.S.C. § 5584 (1982):

"§ 5584. Claims for overpayment of pay and allowances, other than travel and transportation expenses and allowances and relocation expenses

"(a) A claim of the United States against a person arising out of an erroneous payment of pay or allowances, other than travel and transportation expenses and allowances and relocation expenses payable under section 5724a of this title, * * * the collection of which would be against equity and good conscience and not in the best interests of the United States, may be waived in whole or in part by-

"(1) The Comptroller General of the United States; or

"(2) the head of the agency when-

"(A) the claim is in an amount aggregating not more than \$500; * * *." (Emphasis added.)

The exercise of such statutory authority by the Comptroller General or the head of the agency is specifically precluded in Mr. Williams' case because the overpayment in question involved transportation expenses. See also 4 C.F.R. § 91.2(c) (1984). Therefore, notwithstanding equitable considerations that might be involved, there is no legal authority upon which Mr. Williams' debt may be waived. See for example M. Reza Fassihi, 54 Comp. Gen. 747 (1975); Bernard J. Peters, B-207647, July 13, 1982.

Under section 3(b) of the Federal Claims Collection Act of 1966, 31 U.S.C. 3711 (1982), the head of an agency is authorized to compromise a claim or to terminate or suspend collection action under certain prescribed conditions. However, where there is a present or prospective ability to pay on the debt, such as Mr. Williams' continued employment, collection generally must be attempted. This is especially true in Mr. Williams' case where he is employed by the Government and the excess weight charges may be collected by salary offset as prescribed by the Debt Collection Act of 1982, 5 U.S.C. § 5514 (1982). See also 4 C.F.R. § 102.3 (1984); and see for case examples James A. Schultz, 59 Comp. Gen. 28 (1979); and Michael W. Matura, B-195471, October 26, 1979.

The adjudication of our Claims Group in Mr. Williams' case is affirmed.

Milton J. Fowler
for Comptroller General
of the United States