

DATE: April 12, 2007

In Re:

[REDACTED]

Claimant

)

Claims Case No. 07040601

CLAIMS APPEALS BOARD
RECONSIDERATION DECISION

DIGEST

An employee's debt resulting from the government's payment to a moving company of the entire amount charged for the employee's household goods shipment, including weight in excess of the authorized weight, cannot be considered for waiver under 5 U.S.C. § 5584 because the debt is not a result of an erroneous payment.

DECISION

An employee requests reconsideration of the March 29, 2007, appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 07031503, in which DOHA determined the claim could not be considered for waiver because it did not represent an erroneous payment.

Background

In September 2005 the employee was transferred from Shelbyville, Kentucky, to Fort Leonard Wood, Missouri. In connection with his transfer, he was authorized the shipment of 18,000 pounds of household goods. However, the employee shipped 21,380 pounds of household goods. As a result, he exceeded his authorized shipping allowance by 3,380 pounds. The shipping of the excess 3,380 pounds resulted in an additional charge of \$1,985.40, which, in accordance with long-established practice, was paid by the government to the carrier and then charged to the employee.

In his request for reconsideration, the employee states that this long-established practice is unfair and flawed in its ability to prevent mistakes and oversights by the moving company. He states that there is no incentive for the moving company to hold weights to the agreed upon amount. In addition, there is no incentive for the government to hold the moving company accountable since the policy is to pass any overage cost onto the employee. He requests review of his case and asks that steps be taken to change this practice.

Discussion

Under 5 U.S.C. § 5584, we have the authority to waive the collection of erroneous overpayments of pay and certain allowances made to specified federal employees, if collection of the claim would be against equity and good conscience, and not in the best interest of the United States, provided that the claim arose from administrative error and there is no indication of fraud, fault, misrepresentation, or lack of good faith on the part of the employee. *See* DoD Instruction 1340.23 (Instruction) ¶ E4.1.2. In order to be considered for waiver under 5 U.S.C. § 5584, the debt must have resulted from an erroneous payment. *See* Instruction ¶ E2.1.

It is standard government agency practice to ship the total weight of an employee's household goods at government expense and then collect any charges for excess weight from the employee. *See* ¶ C5175 of Volume 2 of the Joint

Travel Regulations (JTR). When a household goods shipment is made in accordance with this practice, the government bill of lading constitutes a contract between the government and the carrier. Under that contract, the carrier is entitled to payment for its services. Upon completion of the shipment the government pays the carrier the entire amount charged and collects any excess charges from the employee for exceeding his authorized weight allowance. This debt does not result from "erroneous" payments made to the employee. It is a valid payment and there has been no erroneous payment for the purposes of the waiver statute. The government has committed no error, but has merely made payment in the normal course of business in satisfaction of its contractual obligation. *See* DOHA Claims Case No. 02102812 (November 18, 2002); B-258964, July 12, 1995; B-239661, June 4, 1990; and 67 Comp. Gen. 484 (1988). Therefore, the initial payment of excess weight charges by an agency in accordance with this practice is not erroneous, and claims against employees arising from such payments may not be considered for waiver under 5 U.S.C. § 5584. *See* 67 Comp. Gen. 48, *supra*.

In this case, the payment to the carrier was made in accordance with standard government practice. The payment made to the carrier was not erroneous and there was no error on the part of the government in making the payment. As for the employee's request to change government practice, as stated above, our authority in this matter is restricted to a consideration of whether the employee's debt may be waived under the provisions of 5 U.S.C. § 5584. Under the waiver statute, the debt cannot be considered for waiver.

Conclusion

The employee's request for relief is denied, and we affirm the March 29, 2007, decision. In accordance with Department of Defense Instruction 1340.23, ¶ E8.15, this is the final administrative action of the Department of Defense in this matter.

Signed: Jean E. Smallin

Jean E. Smallin

Acting Chairman, Claims Appeals Board

Signed: William S. Fields

William S. Fields

Member, Claims Appeals Board

Signed: Catherine M. Engstrom

Catherine M. Engstrom

Member, Claims Appeals Board