



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Drs. Michael H. Mattei and Loren T. Wilkenfeld Waiver Requests

File: B-261483; B-265864.2

Date: August 29, 1996

DIGEST

Two new employees moving from their homes in California to their first duty station in North Carolina were advised by an agency official responsible for arranging their household goods shipments that they could have their automobiles shipped via government bill of lading with their household goods to their duty station, but they would be required to reimburse the agency for the costs of shipping the automobiles. The official incorrectly advised them, however, that their costs would be a \$113.50 bulky article charge, when in fact in addition to such charge, the carriers also charged rates applied to the weight of the automobiles, resulting in much greater total charges. The employees' requests for waiver of their resulting debts to the agency may be granted to the extent that in reliance on the erroneous advice, they incurred expenses for transporting the automobiles greater than they otherwise would have incurred. Dr. Loren T. Wilkenfeld, B-265864, Dec. 7, 1995, overruled in part.

DECISION

Dr. Michael H. Mattei requests reconsideration of our Claims Group's settlement Z-2942034-025, March 23, 1995, denying his request for waiver of his debt of \$2,969.26 to the Department of Veterans Affairs (VA) for excess costs incurred by the VA for the shipment of his two automobiles to his first duty station. Dr. Loren T. Wilkenfeld requests reconsideration of our decision B-265864, December 7, 1995, in which we affirmed the Claims Group's denial of her request for waiver of her debt of \$1,794.99 to the VA which arose under the same circumstances as Dr. Mattei's. Upon further consideration, we now believe partial waiver of these debts is appropriate.

Background

In the summer of 1993, Dr. Mattei and Dr. Wilkenfeld, newly appointed VA employees, were issued travel orders authorizing them and their families to travel to their initial duty station, the VA Medical Center in Salisbury, North Carolina. Their travel orders also authorized the shipment of their household goods on government

bills of lading (GBLs) from their homes in California to Salisbury. Both employees elected to travel by commercial airline to North Carolina. Each owned two automobiles which they requested be shipped with their household goods. VA authorized shipment of the automobiles with the household goods, subject to the employees reimbursing VA for the cost of shipping the automobiles since employees' automobiles are specifically excluded by the Federal Travel Regulations (FTR) from items which may be shipped as household goods at government expense. FTR § 302-1.4(j)(1)(i).¹ Upon completion of the shipments, the VA paid the carriers for the total costs of the shipments and sought to recover from Dr. Mattei and Dr. Wilkenfeld the excess costs paid for the shipment of their vehicles.

Both employees contended that the costs assessed them were much greater than the agency had led them to believe when they requested shipment of their vehicles, and they requested waiver of their resulting debts. The employees stated that the VA purchasing official who made the arrangements with the carriers and issued the GBLs told them at the time they requested shipment of the vehicles that they would be required to reimburse VA for a \$113.50 bulky article charge applicable to each vehicle and no mention was made of any additional charges. They also point out that they were new employees not familiar with government procedures and they were not given complete counseling on their shipping entitlements prior to their moves. Thus, they believe they rightfully relied on the advice of the purchasing official, who was in charge of arranging the shipments, as to the costs of shipping their vehicles. Both employees indicate that they had other options available to move their vehicles to North Carolina which they would have pursued, such as by driving one and personally arranging for shipment of the other, had they known the true costs of shipping them by moving van. In this regard, Dr. Mattei states that he could have had one of his automobiles shipped by rail to North Carolina for about \$600.

The agency report on the waiver requests includes a VA accounting supervisor's statement that she advised both employees well in advance of shipment that the government would not pay the cost of shipping their automobiles. The VA purchasing official who made the arrangements for the employees' household goods shipments and issued the GBLs also states that he told the employees that they would be responsible for reimbursing VA for the cost of shipping the automobiles, and he entered a statement to that effect on the GBLs. However, he also acknowledges that he advised the employees only of the bulky article charge and

¹See also 5 U.S.C. § 5727(a), which provides that except as specifically authorized by statute, an authorization in a statute or regulation to transport the effects of an employee or other individual at government expense is not an authorization to transport an automobile.

not of any other charges because the bulky article charge was the only charge he was aware of that would apply to the automobiles.

In considering the employees' waiver requests, the agency initially denied the requests, but upon reconsideration after review by an agency traffic management official, the agency recommended that the debts be waived, stating that the Salisbury office had acknowledged that they failed to provide guidance and counseling regarding the moves. Since the amounts of the debts exceed the \$1,500 limit on the VA's waiver authority,² the requests for waiver were forwarded to our Claims Group for consideration.

The Claims Group denied the waivers on the basis that our waiver authority applies only to debts which arise out of erroneous payments by the government, and the record showed no erroneous travel orders or other erroneous authorization to ship the vehicles at government expense. The Claims Group noted also that the record indicated that both employees had been advised prior to shipment that they would be responsible for the costs of shipping their automobiles. Dr. Wilkenfeld appealed the Claims Group's denial, and we affirmed the Claims Group's action by our decision of December 7, 1995, supra, for essentially the same reasons asserted by the Claims Group.

Analysis and Conclusions

Pursuant to 5 U.S.C. § 5584, we may waive, in whole or in part, a claim against an employee "arising out of an erroneous payment" of transportation or relocation expenses, the collection of which would be against equity and good conscience and not in the best interests of the United States, provided there is no indication of fraud, misrepresentation, fault, or lack of good faith on the part of the employee. Generally, an employee's debt for the excess costs an agency has incurred in connection with shipment of the employee's household goods is not subject to this waiver authority because the agency has made no erroneous payment; it has merely made a payment in the normal course of business to satisfy its obligation to the carrier, and then is simply recouping from the employee amounts related to excess weight or items for which the government is not authorized to bear the cost of shipment. See 67 Comp. Gen. 484, 486-487 (1988); and B-252103, June 17, 1993.

We have recognized, however, that in some limited circumstances where the excess charges resulted from an erroneous authorization by the agency, the resulting claim may be considered to have arisen out of an erroneous payment and thus to fall within our waiver authority. See 67 Comp. Gen. 486-487, supra. See also, Gunnery

²5 U.S.C. § 5584(a)(2).

Sergeant Robert S. Jackowski, B-229335, Oct. 21, 1988.³ While ordinarily we would expect such an erroneous authorization to be in the travel orders or similar written form, we have recognized that oral advice may rise to the level of an erroneous authorization in some cases. For it to do so however, it must be shown clearly that such oral advice was given by an agency official with the responsibility for providing such advice and that the advice purported to provide the authorization on which the employee relied. B-252103, June 17, 1993, supra.

In another case also involving a newly appointed employee moving from his home to his first duty station, we found that oral advice provided to the employee that he could ship his automobile at government expense with his household goods as long as the total weight of the shipment did not exceed his weight allowance, amounted to an erroneous authorization and provided a basis to consider the employee's debt for waiver. Kenneth T. Sands, B-229102, Dec. 5, 1988. In that case, the employee was moving under the commuted rate system whereby he was required to make the shipping arrangements himself with subsequent reimbursement to him by the agency. There we took note of the fact that the FTR places special responsibility on agencies to provide full information to newly hired employees regarding their transportation benefits.⁴ When this employee had to seek clarifying information as to his entitlements, it necessarily was to the agency personnel specialist handling his hiring that he turned, and when the personnel specialist provided erroneous advice on which the employee relied, we considered his resulting debt to fall within our waiver authority. See also, John W. Meeker, B-239663.3, Oct. 11, 1991, involving a similar situation, and Paul Rodriguez, 67 Comp. Gen. 589 (1988), where the employee was given erroneous information concerning the extra cost of additional insurance on his household goods shipment. In these three cases we granted waiver of the debts to the extent that the employees incurred excess expenses in reliance on the erroneous information.

The situations of Dr. Mattei and Dr. Wilkenfeld are somewhat similar to the three preceding cases, particularly the Sands case. Both of these employees were new appointees to whom the agency had a special responsibility to provide full information regarding their travel and transportation benefits in reporting to their

³Applying the similar waiver authority under 10 U.S.C. § 2774, applicable to members of the uniformed services.

⁴The current pertinent FTR provision is § 302-1.10(b), which provides that because new employees usually lack experience in government procedures, "each agency shall adopt special measures to provide full information to new appointees concerning the benefits which may be available to them for travel and transportation involved in reporting to their new duty stations. Special care shall be taken to inform appointees of the limitations on available benefits."

new duty station. Although they appear to have been correctly advised that they would be required to reimburse the agency for the extra cost of shipping their automobiles with their household goods, they were given incorrect or incomplete advice as to the cost that would be involved, a critical factor in making their decisions to have the vehicles shipped with their household goods. In these circumstances, we now think that their debts fall within the purview of the waiver statute on the same basis as the debts in the Sands, Meeker, and Rodriguez cases discussed above. We find that the employees reasonably relied on the VA purchasing official's erroneous advice to their detriment, and there is no indication of fraud, misrepresentation, fault, or lack of good faith on their parts. Accordingly, Dr. Mattei's and Dr. Wilkenfeld's debts qualify for waiver, to the extent that they incurred extra expenses based on their detrimental reliance on the erroneous advice.

In determining the amounts of the debts to be waived, we think it appropriate to take into consideration the fact that they received the benefit of having their automobiles transported to the new duty station. As they noted, they could have accomplished this by driving one vehicle across country, for which presumably the agency would have provided them a mileage allowance in lieu of paying their air fares, and shipping the other vehicle by some less expensive method at their own expense. Therefore, we think it appropriate for the VA to determine what the reasonable cost would have been to have one of each employee's vehicles transported by an alternative method to the new station, and those amounts should be collected from them.⁵ The balances of their debts (the extra costs they incurred as a result of their reliance on the erroneous advice) may then be waived.⁶

⁵For example, Dr. Mattei states that he could have had one automobile shipped by rail at a cost of \$600. If the agency determines that to be a reasonable charge for this service, which he would have incurred but for the erroneous advice, the \$600 should be collected from him and the remaining \$2,369.26 of his debt would be appropriate for waiver. The agency may wish to consult the General Services Administration if it needs assistance in determining the reasonable cost of such a shipment. See 41 C.F.R. Subpart 101-40.1.

⁶A debt thus determined that is \$1,500 or less may be waived by the VA. If a debt exceeds that amount, it should be returned here for waiver. 5 U.S.C. § 5584(a), and 4 C.F.R. § 92.2(c).

Our decision B-265864, December 7, 1995, in Dr. Wilkenfeld's case and the Claims Group's denials of waiver in both cases are modified accordingly. The VA should take action in accordance with the above.

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