



The Comptroller General
of the United States

Washington, D.C. 20548

J. McGuire, PLM

Decision

Matter of: Collection of Funds Paid on Fraudulent
Travel Claims

File: B-224750

Date: September 25, 1987

DIGEST

Collection by offset from employees' salaries for excess amounts they received for travel expenses due to their submitting allegedly fraudulent lodging receipts must be made pursuant to 5 U.S.C. § 5514. Under that statute and implementing regulations they are entitled to procedural safeguards, including a hearing if they so request.

DECISION

This action is in response to a request from the U.S. Army made pursuant to 4 C.F.R. § 22.1 et seq., regarding whether funds paid to several employees, based upon travel claims subsequently found to be fraudulent, may be collected under 31 U.S.C. § 3716 by administrative offset or whether collection must be made pursuant to 5 U.S.C. § 5514 which authorizes salary offset to collect general debts owed by employees to the government, but imposes a number of procedural requirements before offset can be made.^{1/} It is our view that collection by salary offset of erroneous overpayments made to employees due to fraudulent travel vouchers in the cases presented must be made pursuant to 5 U.S.C. § 5514, and the agency must provide the employees with its procedural protections before offset may be made.

The Army has presented three travel claims submitted by civilian employees at Letterkenny Army Depot, Chambersburg, Pennsylvania. After the vouchers were submitted and claims were paid, an investigation revealed that the claims were

^{1/} The request was made by David L. Gagermeier Attorney-Adviser Chief, Legal Office U.S. Army Finance and Accounting Center Department of the Army Indianapolis, Indiana.

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fraudulent. Apparently findings of fraud were based on allegations that the employees had been issued receipts for lodging for amounts in excess of amounts they actually paid for lodging, and they had used the higher amounts in making their per diem claims.

The Army then sought to recoup the payments which were tainted by fraud. The employees have requested hearings pursuant to 5 U.S.C. § 5514 before an offset is made against their salaries to recoup the payments. The issue presented is whether the claimants must be provided a hearing and all the procedural protections set forth in 5 U.S.C. § 5514 before recoupment may be made from their salaries.

The Army has noted that prior to 1982, 5 U.S.C. § 5514 provided authority for installment deductions from salary because of erroneous payments made by an agency to an employee. Section 5 of the Debt Collection Act of 1982, Public Law No. 97-365, 96 Stat. 1749, amended § 5514 to authorize salary offset to collect general debts owed by government employees to the United States, but imposes a number of procedural requirements upon the agency before offset can be made, and provides employees with certain rights, including an opportunity for a hearing on the determination of the agency concerning the existence or the amount of the debt.

The Army further noted that in the past, collection of fraudulent claims has been treated differently from other claims, citing several decisions issued by this Office in which we held that when an item of pay or allowances was wrongly obtained through fraud or misrepresentation, the payment was considered to be erroneous and erroneous payments could be deducted under 5 U.S.C. § 5514.

The Army argues that fraud should continue to be an independent basis for offset collection against civilian employees without regard to the Debt Collection Act of 1982, since the Debt Collection Act did not implicitly repeal prior offset procedures, and contends that when claims have been determined to be fraudulent, or when a reasonable suspicion of fraud exists, recoupment should be permitted from the claimant's salary or other amounts due from the government after the employee has been afforded his rights under section 10 of the Debt Collection Act.

Section 10 of the Debt Collection Act of 1982, 31 U.S.C. § 3716, amended the Federal Claims Act of 1966 to provide a statutory basis for administrative offset generally. However, the procedures set out in section 10 are less stringent than those in section 5 which amended 5 U.S.C. § 5514.

It is our view that collection of erroneous payments by salary offset, even when determined to be caused by fraudulent claims, must be made pursuant to section 5 of the Debt Collection Act and provide due process procedural rights to the employee involved.

While neither the applicable statute nor the legislative history specifically addresses the issue of fraudulent claims with regard to administrative offset, there is discussion regarding erroneous payments, including travel. Senate Report 97-378, May 3, 1982, contains a discussion of section 5. The section-by-section analysis provides:

"The type of indebtedness that may be deducted would include, but is not necessarily limited to, erroneous payments made to the employees, overpayments of benefits, salary or other allowances, travel allowances * * *."

In addition, we note that while 31 U.S.C. § 3716 generally provides for administrative offset for a debt owed, 5 U.S.C. § 5514 specifically provides for collection in installments from an employee's salary, which the Army proposes to do in the cases presented. Offset under 5 U.S.C. § 5514 is a form of administrative (i.e., non-judicial) offset^{2/} applicable only to offset against an employee's current pay account. Offset under 31 U.S.C. § 3716 also applies to debts owed by federal employees,^{3/} but only in certain situations--specifically, situations which are not governed by some other more specific offset statute. Offset against current salary is specifically addressed in another offset statute, 5 U.S.C. § 5514. Hence the specific authority of that statute applies rather than the more general authority of 31 U.S.C. § 3716.

With regard to the two Comptroller General decisions cited as authority to allow disbursing officers to recoup payments made as the result of fraud or suspected fraud, leaving claimants to seek redress in the courts, those decisions were issued prior to the enactment of the Debt Collection

2/ See 5 C.F.R. § 550.1102(b) and the corresponding discussion in the Supplementary Information statement found at 49 Fed. Reg. 27470 (July 3, 1984).

3/ 49 Fed. Reg. 8890 (March 9, 1984) (Supplementary Information comments on 4 C.F.R. § 102.3).

Act. In addition, the three decisions cited, dated 1985, as affirming those decisions all deal with claims based upon fraudulent vouchers in 1980 and recoupment by the disbursing officers in those cases was made in 1981, prior to the enactment of the Debt Collection Act.

We have held that salary offsets authorized by statutes other than 5 U.S.C. § 5514 are not subject to the more stringent provisions of that section. 64 Comp. Gen. 142 (1984). We are not aware of any other applicable statutory provisions in this case which would allow use of less stringent provisions than those provided for by 5 U.S.C. § 5514.

We note that Congress recently enacted specific provisions dealing with collection of fraudulent payments and civil penalties which may be applied in certain cases involving fraud against the government. See the Program Fraud Civil Remedies Act of 1986, Public Law No. 99-509, §§ 6101-6104, October 21, 1986, 100 Stat. 1874, 1934, which added to title 31, United States Code, Chapter 38 - Administrative Remedies for False Claims and Statements. Those provisions, however, apply only to claims or statements made, presented or submitted on or after the effective date of the Act, October 21, 1986, and the claims involved here were made several years prior thereto.

Accordingly, it is our view that recoupment by salary offset of the erroneous payments made pursuant to fraudulent claims in the cases presented must be made pursuant to 5 U.S.C. § 5514. With respect to the form of hearing required, see 5 C.F.R. § 550.1104(g).

for *Harry R. Van Cleave*
Comptroller General
of the United States