



UNITED STATES  
CIVILIAN BOARD OF CONTRACT APPEALS

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July 20, 2015

CBCA 4433-TRAV

In the Matter of RICHARD FRANKA

Richard Franka, Atlanta, GA, Claimant.

Kevin Hokett, Travel Policy Lead, Office of the Chief Financial Officer, Centers for Disease Control and Prevention, Department of Health and Human Services, Atlanta, GA, appearing for Department of Health and Human Services.

**STERN**, Board Judge.

The Centers for Disease Control and Prevention (CDC) requests a decision from this Board as to whether the CDC may seek reimbursement of a travel advance issued in 2007.

Background

Claimant is an employee of the CDC. In June 2007, the CDC issued temporary duty orders and a travel advance in the amount of \$4200.90 to claimant for overseas travel. Claimant performed the travel from June 23 to July 19, 2007. On October 3, 2007, claimant entered his travel voucher for this trip into the Government trip expense system (GovTrip). On October 9, 2007, the CDC adjusted the voucher and returned it to him for his signature. That voucher was never re-signed and stayed unresolved for several years.

On April 25, 2011, the agency contacted claimant about several unresolved travel advances, including the one at issue before us. While he acknowledged needing to complete vouchers for some of the advances, claimant disputed the agency's determination that the travel advance at issue in the dispute before us was unresolved. He explained that he submitted the necessary receipts and documentation for this advance in 2007. The parties

spent the following three years corresponding about whether claimant was obligated to return the \$4200.90 advance.

On May 19, 2014, in an attempt to resolve the matter, claimant resubmitted the voucher for the travel for which the advance had been provided. In October 2014, the agency determined the following:

Travel was completed July 2007. Per regulations, claims must be filed within 6 years. He had until July 2013 to file his claim. Voucher in GovTrip 10/3/07. Voucher returned for corrections on 10/6/07. Traveler did not sign voucher again until 5/19/14, a year past deadline to file a claim. He owes \$4200.90.

Due to the passage of so much time, the CDC asks us to determine whether it can still pursue the claim against claimant, and if so, in what amount.

### Discussion

This claim, which concerns travel by a civilian employee of the Government, is subject to the Federal Travel Regulation (FTR). The FTR provides that an employee is to account for a travel advance at the time a claim is filed and that the agency should take alternative steps to recover an excess advance that is not paid back, including offset against the employee's salary, deduction from an amount the Government owes the employee, or any other legal method of recovery. 41 CFR 301-71.305, .308 (2007).

Statute provides that "every action for the recovery of money erroneously paid to or on behalf of any civilian employee of any agency of the United States . . . incident to the employment or services of such employee . . . shall be barred unless the complaint is filed within six years after the right of action accrues." 28 U.S.C. § 2415(d) (2012). The statute deems the action to accrue again at the time of any partial payment or acknowledgment by the employee of the debt. *Id.* However, the statute is applicable only to judicial actions which may be brought by an agency. *BP America Production Co. v. Burton*, 549 U.S. 84 (2006). It has no applicability to administrative actions, including offsets by the agency against the salary or other sums due to the employee.<sup>1</sup> Such actions are not barred due to the

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<sup>1</sup> The *BP America* decision abrogated a 10<sup>th</sup> Circuit Court of Appeals ruling that had relied on a decision from the Federal Circuit Court of Appeals in *United States v. Hanover Insurance Co.*, 82 F.3d 1052 (Fed. Cir. 1996), holding that this statute of limitations applies to both judicial and administrative agency actions. Because of the Supreme Court's decision in *BP America*, the holding in *Hanover* is no longer valid.

passage of time. We are not aware of any other statute or regulation that limits the time during which an agency may take an administrative action to collect an overpayment to an employee.

Here, the CDC's claim accrued at the earliest when claimant completed his travel (July 2007), or at the latest when he allegedly failed to re-sign the adjusted travel voucher (October 2007). Both events are well outside of the six-year statute of limitations imposed by the statute. While the parties engaged in numerous discussions subsequent to the initial filing of claimant's voucher, claimant neither acknowledged the debt nor made any partial payment of it. Therefore, the right of judicial action by the CDC was not extended to a later period. CDC's right of judicial action against claimant concluded six years after the claim accrued (during 2013) and is now barred by statute.

However, as we have stated above, the statute has no applicability to administrative actions. These actions are not barred by the passage of time. The CDC may, therefore, attempt to recover any overpayment through offsets against salary or other amounts due claimant, as set forth in the FTR.

We make no determination regarding the amount due the CDC (if any). The record does not contain sufficient information to make such a finding. We note that claimant may request review by this Board of any future CDC determination regarding the amount due.

### Decision

The CDC may not recover any part of the travel advance paid claimant in 2007 by judicial action, as it is barred by the statute of limitations from bringing an action to recover the advance. The CDC may use administrative means to attempt to collect any erroneous travel advance.

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JAMES L. STERN  
Board Judge