



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

September 21, 2016

CBCA 5475-TRAV

In the Matter of BRIAN R. WYBRECHT

Brian R. Wybrecht, APO Area Europe, Claimant.

Anne M. Schmitt-Shoemaker, Deputy Director, Finance Center, United States Army Corps of Engineers, Millington, TN, appearing for Department of the Army.

DANIELS, Board Judge (Chairman).

The Army Corps of Engineers sent one of its employees, Brian R. Wybrecht, on temporary duty (TDY) assignments in various cities in Europe over a period of 179 days in 2015 and 2016. It paid him the total amount of \$21,946.68 to cover the costs of his lodging, meals, and incidental expenses. Later, the agency determined through an audit that it should have paid Mr. Wybrecht only \$20,857.93. It sent the employee a series of letters demanding that he refund the difference between the two figures, \$1088.75, to the agency.

In attachments to its demand letters, the Corps notified Mr. Wybrecht that he could contest the validity of the debt by asking the Civilian Board of Contract Appeals to review the matter.¹ In the attachments, the Corps told him that if he did not contest the validity of

¹ The Corps mistakenly termed our review a “hearing.” The Board has the authority to “settle claims involving expenses incurred by Federal civilian employees for official travel and transportation,” per 31 U.S.C. § 3702(a)(3) (2012) and a delegation of authority from the Administrator of General Services. Our claims settlement process does not include a hearing, however. Instead, we issue decisions after considering written statements from employees, responses from agencies, and employees’ replies to agencies’

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the debt, he could submit a request to the agency seeking a waiver of the Government's right to collect the debt.

Mr. Wybrecht chose to ask the Board to review the matter. We then posed a series of questions to the Corps, requesting an explanation of the calculations on which the demand for repayment was based. Although the agency answered only some of the questions, the information it provided prompted Mr. Wybrecht to reply, "I agree with the analysis." He continued, "I am simply requesting any errors that propagated for 6 months – unknowingly to me – be waived. Given the fact that I spent the last 6 months working with the Army in Europe and am now in Iraq, and for reasons of morale, please consider waiving the charges."

We have no authority to take the action Mr. Wybrecht seeks. Congress has provided in statute that "[a] claim of the United States against a person . . . arising out of an erroneous payment of travel, transportation or relocation expenses . . . , to an employee of an agency, 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." 5 U.S.C. § 5584(a) (2012). The waiver authority is assigned not to the Board, but rather to "the authorized official" – meaning, for executive branch agencies, the Director of the Office of Management and Budget – or "the head of the agency when – (a) the claim is in an amount aggregating not more than \$1,500; and (B) the waiver is made in accordance with standards which the authorized official shall prescribe." *Id.* (referencing subsection (g)). We have therefore consistently dismissed requests that we waive debts, arising out of erroneous payment of travel or relocation expenses, which are owed by employees to their agencies. *E.g.*, *Sydney C. Kaus*, CBCA 3744-RELO, 14-1 BCA ¶ 35,731; *RuthAnne S. Darling*, CBCA 1461-TRAV, 09-2 ¶ 34,153; *Michael J. Kearney*, CBCA 483-RELO, 07-1 BCA ¶ 33,557.

¹ (...continued)

responses. *See* 48 CFR 6104.401 to .408 (2015). A "hearing on the determination of the agency concerning the existence or the amount of the debt" is available at an employee's option under a separate statutory authority, 5 U.S.C. § 5514(a)(2)(D). Such a hearing is to be conducted by an individual who is not "under the supervision or control of the head of the agency, except that nothing in this sentence shall be construed to prohibit the appointment of an administrative law judge." *Id.* The Board does not conduct such hearings.

We dismiss this case as well, for want of authority to take the action sought by the employee. Mr. Wybrecht may wish to follow the instructions provided by the Corps for requesting a waiver of the Government's right to collect the debt he acknowledges that he owes.

STEPHEN M. DANIELS
Board Judge