



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

September 8, 2022

CBCA 7308-DBT

In the Matter of ALEXIS T.

Alexis T., Petitioner.

Kimberly I. Thayer, Office of General Counsel, National Tort Claims Center, General Services Administration, Washington, DC, appearing for General Services Administration.

KULLBERG, Board Judge.

Petitioner seeks review of a notice of debt collection by wage garnishment in the amount of \$1589.70. The General Services Administration (GSA) contends that petitioner is responsible for the cost of repairs of damage to a GSA vehicle plus interest. Petitioner denies liability. For the reasons stated below, the Board does not find that a legally enforceable debt exists in this matter.

Background

On December 9, 2020, at 12:30 p.m., petitioner was involved in an automobile accident which involved a GSA-owned vehicle and another vehicle. A police report summarized the petitioner's statements as follows:

[Petitioner] identified herself . . . as the driver of [vehicle (V) 1]. She stated that she was traveling southbound on Shackelford Road in the left lane attempting to make a left turn into the [coffee shop] parking lot. As she was attempting to make the turn the front driver side of V2 collided with the front passenger side of V1. After the collision occur[r]ed with V1 and V2[,] the impact of that collision caused the front driver side of V1 to collide with rear passenger side of V3. [Petitioner] was issued citations . . . [for] careless and

prohibited driving, driving with expired tags and fail[ure] to show proof of insurance.

The report summarized the statement of the driver of V2 as follows:

He stated he was traveling northbound on Shackelford Road in the right turning lane when V1 pulled out in front of him into his lane of traffic causing the front driver side of V2 to collide with the front passenger side of V1.

Finally, the report summarized the statement of the driver of the GSA-owned vehicle, V3, as follows:

He stated that he was traveling northbound on Shackelford Road and he stopped at a red traffic signal. He stated that while he was stopped he saw V1[,] which was traveling southbound on Kanis, attempt . . . a left hand turn behind his vehicle and cross his lane of traffic as well as the right hand turning lane. He stated that the V2 which was traveling in the right hand turning lane collided with V1 forcing V1 to collide with the rear passenger side of V3.

A witness parked in the coffee shop parking lot stated the following:

[S]he witnessed V1 straddling lanes and she witnessed the impact of V1 and V2. She stated that it appeared that V1 was attempting to get into the right hand turn lane to turn right onto Kanis Road when this accident occur[re]d. She did not see the impact between V1 and V3.

Petitioner's vehicle was the only one that was damaged to such an extent that it needed to be towed. A photograph of the intersection of Shackelford Road and Kanis Road showed two southbound lanes and three northbound lanes on Shackelford Road with an entrance to the parking lot of the coffee shop.

By letter dated January 8, 2021, GSA notified petitioner that it had determined that petitioner was responsible for damage to V3, the GSA-owned vehicle, and demanded payment in the amount of \$1589.70. By letter dated October 13, 2021, Pioneer Credit Recovery (Pioneer), which was acting on behalf of GSA, notified petitioner that she owed a debt in the amount of \$1589.70 plus interest, and Pioneer intended to collect the debt claimed by wage garnishment. By letter dated November 1, 2021, petitioner notified Pioneer that she denied the existence of the debt.

The Board docketed this matter, and the Board's January 25, 2022, order directed GSA to submit its administrative report to show that a legally enforceable debt exists in this matter. The Board issued a subsequent order that directed GSA to state whether the December 9, 2020, citation, which had been issued to petitioner, had been adjudicated and the result of any such proceeding. GSA represented that it had been unable to find any record of the adjudication of petitioner's traffic citation. However, GSA urged the Board to find liability based upon the record.

Discussion

The issue before the Board is whether GSA can collect from petitioner by wage garnishment the cost of repairing its vehicle where the basis for the asserted debt is GSA's allegation of tort liability in an automobile accident involving a GSA vehicle. The relevant garnishment statute provides the following:

Notwithstanding any provision of State law, the head of an executive, judicial, or legislative agency that administers a program that gives rise to a delinquent nontax debt owed to the United States by an individual may in accordance with this section garnish the disposable pay of the individual to collect the amount owed, if the individual is not currently making required repayment in accordance with any agreement between the agency head and the individual.

31 U.S.C. § 3720D(a) (2018). Additionally, the statute defines a debt subject to wage garnishment as follows:

[T]he term "claim" or "debt" means any amount of funds or property that has been determined by an appropriate official of the Federal Government to be owed to the United States by a person, organization, or entity other than another Federal agency. A claim includes, without limitation—

(A) funds owed on account of loans made, insured, or guaranteed by the Government, including any deficiency or any difference between the price obtained by the Government in the sale of a property and the amount owed to the Government on a mortgage on the property,

(B) expenditures of nonappropriated funds, including actual and administrative costs related to shoplifting, theft detection, and theft prevention,

(C) over-payments, including payments disallowed by audits performed by the Inspector General of the agency administering the program,

- (D) any amount the United States is authorized by statute to collect for the benefit of any person,
- (E) the unpaid share of any non-Federal partner in a program involving a Federal payment and a matching, or cost-sharing, payment by the non-Federal partner,
- (F) any fines or penalties assessed by an agency; and
- (G) other amounts of money or property owed to the Government.

Id. § 3701(b)(1).

GSA's administrative wage garnishment regulation applies "to any GSA program that gives rise to a delinquent non-tax debt owed to the United States and that pursues recovery of such debt." 41 CFR 105-57.001(c)(1) (2021). "[T]he terms 'claim' and 'debt' are synonymous and interchangeable." *Id.* 105-57.002(k). A debt or claim is defined as follows:

[A]n amount of money, funds, or property that has been determined by GSA to be due the United States from any person, organization, or entity, except another Federal agency, from sources which include loans insured or guaranteed by the United States and all other amounts due the United States from fees, leases, rents, royalties, services, sales of real or personal property, overpayments, penalties, damages, interest, fines and forfeitures and all other similar sources including debt administered by a third party as an agent for the Federal Government.

Id. GSA has the burden of proving the existence and amount of a debt. *Id.* 105-57.005(f)(1).

Statute provides for the operation of motor vehicle pools and transportation systems under the authority of the Administrator of General Services. 40 U.S.C. §§ 601–611. GSA regulations provide that "[e]very accident involving a GSA Interagency Fleet Management System (IFMS) vehicle shall be investigated and a report furnished to the manager of the GSA IFMS fleet management center which issued the vehicle." 41 CFR 101-39.403(a). In the case of a claim by the Government, those regulations provide the following:

Whenever there is any indication that a party other than the operator of the GSA [IFMS] vehicle is at fault and that party can be reasonably identified, the agency responsible for investigating the accident shall submit all original documents and data pertaining to the accident and its investigation to the servicing GSA IFMS fleet management center. The GSA IFMS regional fleet

manager, or his/her representative, will initiate the necessary action to effect recovery of the Government's claim.

Id. 101-39.404.

The Board finds that GSA has failed to meet its burden of proof that a legally enforceable debt exists based upon petitioner's tort liability for an automobile accident. The General Services Board of Contract Appeals (GSBCA), which was one of the boards that was consolidated to establish this Board, recognized that a government claim for a debt based upon tort liability must show "(i) that a tort has occurred and (ii) that the alleged debtor is in fact liable for any resulting damages." *Tracy W.*, GSBCA 16520-DBT, slip op. at 5 (Nov. 24, 2004). The GSBCA also recognized that state law would determine liability absent a finding that federal law should control, but the Government must show an analysis of petitioner's conduct and liability in light of that state law. *Lydia C.*, GSBCA 16526-DBT, slip op. at 7 (Nov. 24, 2004). This Board has followed those decisions in finding that GSA had failed to meet its burden of proving liability. *Derric J.*, CBCA 7134-DBT (Aug. 17, 2021).

GSA contends that petitioner violated the traffic laws of the state where the accident occurred by failing to yield to the second vehicle, which struck petitioner's vehicle. The second vehicle struck petitioner's vehicle at a speed sufficient to force petitioner's vehicle into the GSA-owned vehicle. The police report does not provide details as to the distance between the petitioner's vehicle and the speed of the second vehicle as petitioner turned into the parking lot. GSA's analysis, consequently, does not account for the possible contributory fault on the part of the driver of the second vehicle. Additionally, GSA was unable to produce any evidence as to adjudication of the citation against petitioner. At most, GSA assumes petitioner's sole responsibility for the accident without any analysis that excludes the fault of the driver of the second vehicle that struck petitioner's vehicle.

Decision

The Board does not find that a legally enforceable debt exists in this matter. The suspension of collection of the debt in this matter is permanent, and any amounts collected shall promptly be refunded to petitioner.

H. Chuck Kullberg
H. CHUCK KULLBERG
Board Judge