



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

October 13, 2021

CBCA 7159-DBT

In the Matter of TAWANDA H.

Tawanda H., Petitioner.

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

LESTER, Board Judge.

On July 2, 2021, the General Services Administration (GSA) forwarded a request from the petitioner for a hearing to dispute an administrative wage garnishment request initiated by the Department of the Treasury, Bureau of the Fiscal Service (Treasury). The petitioner seeks review of the notice of wage garnishment in the amount of \$13,470.81, which GSA is seeking to recover pursuant to the Debt Collection Improvement Act of 1996, 31 U.S.C. §§ 3701–3733 (2018). GSA contends that the petitioner was responsible for a collision that caused damage to a GSA vehicle, which was being driven by an employee of the Federal Protective Service (FPS), Department of Homeland Security (DHS) while on duty, and that the petitioner is liable for the resulting damage to the GSA vehicle. The petitioner denies responsibility for the accident. For the reasons set forth below, the Board finds that GSA has not met its burden of establishing the existence of a legally enforceable debt.

Background

On September 25, 2017, an on-duty FPS employee was driving a GSA vehicle northbound on Jefferson Avenue in St. Louis, Missouri, when he went through the intersection of Jefferson and Cass Avenues. As the FPS employee drove through the intersection, the GSA vehicle hit the mid-section of a vehicle that the petitioner was driving, which was already in the intersection. The petitioner's vehicle was hit hard enough that it

spiraled and slammed sideways into a pole at the edge of the intersection, breaking the pole (part of which fell on a nearby fence) and injuring a pregnant passenger in the petitioner's vehicle to such an extent that the passenger had to be transported to a hospital. At the scene, the FPS employee claimed that he had initially stopped at a red traffic light at the intersection,¹ received an emergency response call, activated his lights and sirens, looked both ways to ensure that the intersection was clear, and then proceeded through the intersection before hitting the petitioner's vehicle. The petitioner disputed (and continues to dispute) this assertion, alleging instead that the FPS vehicle did *not* have any activated lights or sirens running and that she was unaware that the FPS vehicle was approaching when she drove through the intersection with a green traffic light in her favor.

A police report taken at the time of the accident cited the petitioner with two violations of traffic laws, but neither of those citations involved an assessment of blame for the accident. The two citations were for operating a motor vehicle without insurance and operating a motor vehicle with an expired driver's license. The two citations are irrelevant to fault for the accident, but the officer's apparent inability to assign blame indicates, at the very least, that the question of responsibility was not easy to answer.

On March 22, 2018, GSA sent the petitioner a letter notifying her that it had determined that she was responsible for the accident and was liable for damages caused to the GSA vehicle in the amount of \$12,560.65, plus accruing interest. Additional demand letters were sent on April 25 and May 30, 2018. The debt was subsequently transferred to Treasury, which recovered some of the debt through administrative offset from tax refund money that was otherwise due the petitioner.

On June 2, 2021, Treasury issued a notice of intent to initiate administrative wage garnishment proceedings against the petitioner, identifying a total remaining debt (inclusive of interest) at that time of \$13,470.81. The petitioner elected to request a hearing from the Board regarding the validity of the debt, and GSA, at Treasury's direction, submitted this matter to the Board.

In her statement challenging responsibility for the debt, the petitioner alleged that she "was not liable for the collision" and that "the case is currently being resolved in a settlement for me and the parties involved." During a telephonic hearing before the Board on September 16, 2021, the petitioner provided a docket number for a lawsuit that is pending

¹ The record is somewhat unclear on this point, as, in a different part of the report included in the record, the FPS employee is identified as saying that he slowed down during an emergency call as he came to this intersection, rather than that he was stopped at this intersection when he received the emergency call.

in the United States District Court for the Eastern District of Missouri, No. 4:20-CV-01094-SPM, in which she and two co-plaintiffs are seeking damages from the United States under the Federal Tort Claims Act, 28 U.S.C. § 2671 (2018), for injuries that they allege resulted from the accident in question and were caused by the FPS driver. In her district court complaint, the petitioner alleges that, when the FPS driver approached and then went through a red light at the intersection at issue on September 25, 2017, he did not have his emergency lights and/or sirens activated (contrary to the FPS driver's representations); that he struck the side of the petitioner's vehicle, which was in the intersection (a fact not in dispute); that he was at fault for the collision; and that the United States is subject to liability under section 537.600 of the Revised Statutes of Missouri, which, according to the petitioner in her district court complaint, "waives sovereign or government immunity in cases, of which this is one, directly resulting from the negligent acts or omissions by public employees arising out of the operation of motor vehicles or motorized vehicles within the course . . . of their employment."

In its response to the petitioner's district court action, the United States, represented by the United States Attorney's Office, filed a counterclaim against the petitioner, alleging that the petitioner, not the FPS employee, was responsible for the accident on September 25, 2017, and that the United States was entitled to recover, among other amounts, \$14,060.65 for damage to the FPS vehicle. The damages that the United States seeks through its counterclaim are the same damages and involve the same vehicle that are the subject of GSA's current efforts to collect monies through administrative wage garnishment.

The docket for the district court lawsuit indicates that the parties in that case entered into a settlement agreement, through which the petitioner and her co-plaintiffs would be paid a certain amount of money and the Government would accept entry of judgment with prejudice against the United States, on or about April 15, 2021. On May 6, 2021, the parties requested approval of the settlement agreement, which, under Missouri state law, the court must approve because one of the co-plaintiffs is a minor. The co-plaintiffs, including the petitioner, have since disputed the settlement, and the district court has not yet approved it. The petitioner's prior counsel in the district court action has now withdrawn from that case, and the district court provided the co-plaintiffs until October 4, 2021, to retain counsel for the minor co-plaintiff in any further proceedings before the district court. It is unclear whether the petitioner responded to the district court by the identified October 4 deadline, but, in any event, the district court case remains open.

GSA has represented that, prior to the Board hearing, it was unaware of the petitioner's lawsuit, the Government's counterclaim, or the pending potential settlement. After reviewing pleadings from the district court lawsuit, GSA indicated that, pending resolution of the district court action, it would voluntarily withdraw its Treasury claim and cease further collection activities:

Attached to the [Board's] order was newly discovered information pertaining to a pending lawsuit . . . involving the accident at issue in this matter. Because the facts of the accident and the amount of the damages are the subject of the pending litigation, GSA will voluntarily withdraw its Treasury claim, and cease collection of this debt. Future collection efforts will only be made if the final outcome of the pending lawsuit permits same.

Discussion

Under 41 CFR 105-57.005(f)(1), GSA has “the burden of establishing the existence and/or amount of the debt” in the first instance in response to a hearing request in a debt collection case. There need not be a court judgment against the debtor for GSA to collect what it views as a debt, *Red River Farms v. United States*, No. CV-08-2078, 2009 WL 2983195, at *4 (D. Ariz. Sept. 17, 2009) (citing 31 CFR 285.5(d)(3), (6)), but, without a court judgment, we cannot simply assume liability. GSA must present adequate evidence to satisfy its burden of proof. GSA’s mere assertion that the debtor caused the accident in question is insufficient to meet that burden, which requires GSA to prove “(i) that a tort has occurred and (ii) that the alleged debtor is in fact liable for any resulting damages.” GSBICA 16520-DBT, slip op. at 5 (Nov. 24, 2004). Only if GSA meets that burden must the debtor “prove by a preponderance of the evidence that no debt exists or that the amount of the debt is incorrect.” 41 CFR 105-57.005(f)(2).

GSA has informed us that it is voluntarily ending collection efforts pending the conclusion of the litigation in the district court, which, on its face, would appear to moot this matter. We understand, though, that Treasury has already collected money from the debtor on this assessed debt. If the district court approves the settlement that is currently before it, there will be no question that the money already collected through administrative offset would have to be refunded to the petitioner, given that, through the existing settlement agreement that is pending approval in that court, the United States is agreeing to pay money to the petitioner and waive the Government’s affirmative monetary claims. In light of the evidence presented in this matter, however, we see no reason to delay that refund until the conclusion of the district court proceedings.

Here, photographs of the damaged GSA vehicle taken immediately after the accident shows that the front of the GSA vehicle, which smashed into the petitioner’s vehicle, was essentially crushed. Based upon the extensive damage to the front of this vehicle, it seems rather implausible that the FPS employee driving it could have been stopped at or slowed down when approaching the intersection where the accident occurred, as he alleged, and only entered the intersection after cautiously looking both ways to ensure that no other vehicles were approaching. The degree of damage to the front of the GSA vehicle suggests that, when it hit the petitioner’s vehicle, it was already traveling at a rather fast speed, something that

would not have been possible if the FPS employee's representations were completely accurate. Given the implausibility of the FPS employee's account of his actions before entering the intersection, we cannot credit his additional assertion, which conflicts with the petitioner's account, that he also had the vehicle's siren and lights on when he entered the intersection. We cannot find that GSA has met its burden of proving the petitioner liable based solely upon a paper record with what could be characterized, at best, as conflicting "he said, she said" statements, particularly where the on-the-scene police officer could not assign responsibility for the accident. In light of GSA's failure to establish that the petitioner was at fault in the accident, we cannot approve of the Government retaining any collection against her at this time, even though the district court action remains pending.

Decision

The Board finds that GSA has not met its burden of establishing the existence of a legally enforceable debt against the petitioner. Any amounts previously collected from the petitioner through administrative offset shall be promptly refunded to the petitioner. The suspension of collection of the debt in this matter is permanent unless the district court in docket no. 4:20-CV-01094-SPM (E.D. Mo.) disapproves the pending settlement that is before it and finds the petitioner liable for the accident and enters judgment for the Government on its counterclaim. If the district court issues such a liability decision, GSA may renew its efforts to collect a debt from the petitioner.

Harold D. Lester, Jr.
HAROLD D. LESTER, JR.
Board Judge