



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

November 18, 2022

CBCA 7403-DBT

In the Matter of RICO G.

Rico G., Petitioner.

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

RUSSELL, Board Judge.

Petitioner seeks review of a notice of debt collection by wage garnishment, dated June 2, 2021, that was issued by the General Services Administration (GSA). Based on the evidentiary record, the Board finds that a legally enforceable debt exists.

Background

I. Procedural Background

On May 19, 2022, the Board docketed the above-captioned case involving petitioner's request for an administrative wage garnishment (AWG) hearing pursuant to 31 U.S.C. § 3720D(c) (2018). Petitioner requested the hearing challenging the existence of any debt owed to GSA, and requesting proof of the debt. *See* 41 CFR 105-57.002(o) (2021) ("Hearing means a review of the documentary evidence concerning the existence and/or amount of a debt."). GSA submitted this case to the Board on behalf of petitioner.

On June 14, 2022, the GSA timely submitted documents in response to the Board's Order of May 31, 2022, requesting that the agency, "in an administrative report and/or other written submission . . . provide any additional information, not already filed with the Board and provided to [petitioner], finding, evidencing, or otherwise reflecting that [petitioner] is legally responsible for the accident which is the subject of this case, and the extent to which

[petitioner] previously contested or had the opportunity to contest such a finding.” The Board explained that “GSA’s administrative report or other written submission must include all applicable facts and points of law that GSA wants the Board to consider as to why a debt is owed in this case . . . with citations or references to produced documentation when available.”

Also in its Order of May 31, 2022, the Board stated that, “if he so chooses, [petitioner] may provide a written response to GSA’s submission by Tuesday, June 28, 2022.”

A telephonic hearing in this case was scheduled for July 19, 2022. Although the agency’s attorney attended, petitioner did not call into the hearing. Subsequently, on this same day, the Board contacted petitioner, via telephone and email, to ask whether he still wanted a hearing in his case and, if so, his availability through approximately mid-August 2022 for the purpose of scheduling the hearing. The Board’s paralegal subsequently spoke to petitioner on or around July 19, 2022 and, apparently, petitioner represented that he would respond to the Board’s email of July 19, 2022. The Board does not have a record of petitioner responding to this email, nor apparently to the Board’s emails sent on or around September 19, 2022 and October 18, 2022, regarding scheduling a hearing in his case.

In an Order dated November 7, 2022, the Board notified the parties that the hearing in this case was rescheduled to November 16, 2022. In its Order, the Board explained that it “needs to resolve and close this case” and that the “telephonic hearing will move forward on this date and time unless, by no later than Thursday, November 10, 2022, either petitioner or GSA’s representative requests that the hearing be rescheduled due to a conflict and, in their request, propose alternative dates over the next month for the hearing.” Neither petitioner nor GSA’s representative asked that the hearing be rescheduled. Subsequently, GSA’s representative attended the telephonic hearing, but petitioner did not.

II. Factual Background

On November 10, 2014, petitioner was involved in a car accident with a United States government vehicle in Baton Rouge, Louisiana. In a motor vehicle traffic crash report, the responding law enforcement officer reported that he contacted both the driver of the government vehicle and petitioner. According to the report, the driver of the government vehicle stated that he was at a complete stop when petitioner struck his vehicle in the rear bumper. The report reflects that petitioner stated he had stopped, fell asleep, and woke after he struck the government vehicle. The officer, in the report, also stated that he observed minor damage to both vehicles including minor damage to the rear bumper of the government vehicle.

The voluntary statements provided by both the driver of the government vehicle and petitioner were consistent with the crash report. The former stated that he was at a complete stop when he was hit from behind, and the latter stated that he was at a red light, fell asleep, and hit the government vehicle.

The record shows that the government incurred \$1358.30 in costs to repair the government vehicle. The repairs were consistent with the description of the crash, i.e., repairs were done to fix the damage to the trunk, rear body panel, and rear bumper cover. The government sought payment for the repairs from the insurance company which petitioner identified as his automobile insurer. However, the insurance company declined to pay asserting that the damages occurred outside of the policy period.

Discussion

If GSA “determines a delinquent debt is owed by an individual, [it] may initiate administrative proceedings to garnish the wages of the delinquent debtor.” 41 CFR 105-57.003. As petitioner did here, a debtor may request a hearing “concerning the existence and/or the amount of a debt.” *Id.* at 105-57.004(b)(3). “[W]henever GSA is required to afford a debtor a hearing, the hearing official will provide the debtor with a reasonable opportunity for an oral hearing when he/she determines that the issues in dispute cannot be resolved by review of the documentary evidence, for example when the validity of the claim turns on the issue of credibility or veracity.” *Id.* at 105-57.005(b).

GSA has the initial “burden of establishing the existence and/or amount of the debt.” *Id.* at 105-57.005(f)(1). “Thereafter, if the debtor disputes the existence and/or amount of the debt, the debtor must prove by a preponderance of the evidence that no debt exists or that the amount of the debt is incorrect.” *Id.* at 105-57.005(f)(2).

Although the evidence in this case strongly favors GSA, including petitioner’s contemporaneous admission in his voluntary statement submitted as part of the traffic crash report, the Board nevertheless afforded petitioner the opportunity to have a hearing due to his challenge to the existence of the debt and denial that he owed the debt.

The Board scheduled the hearing twice due to petitioner’s unexplained failure to attend the first scheduled hearing. Petitioner failed to attend the rescheduled hearing and, again, provided no reason for his absence. Notwithstanding the Board’s multiple efforts reaching out to him, petitioner has failed to communicate with the Board to convey any interest in pursuing his case. Given petitioner’s actions (or, perhaps more accurately, lack thereof) throughout this case proceeding, we find that he has waived his right to a hearing and to present evidence in this case. 41 CFR 105-57.005(k) (“In the absence of good cause shown, a debtor who fails to appear at a hearing [on a wage garnishment matter] . . . or to

provide written submissions within the time set by the hearing official, will be deemed to have waived his or her right to appear and present evidence.”).

Thus, we turn to the issue of whether GSA can collect from petitioner, by wage garnishment, the cost of repairing its vehicle. We find that GSA has produced sufficient evidence to meet its burden of proof. The most compelling evidence is petitioner’s own contemporaneous written statement conceding fault. The law enforcement officer’s report and the written statement of the driver of the government vehicle also evidenced that petitioner was responsible for the damage to the government vehicle. Additionally, GSA provided proof of its damages, submitting the invoice for the cost of repairing the vehicle. Further, GSA showed that it sought reimbursement from petitioner’s insurer but that insurer, in a written document submitted as part of the record in this case, stated that the accident occurred outside of the policy period. Accordingly, we find that GSA has proved its case against the petitioner on both liability (specifically, that petitioner was responsible for the accident) and damages (that is, petitioner owes GSA for the expenses that the agency incurred repairing its vehicle, plus any interest, penalty, and administrative costs required to be collected by law, *see* 31 U.S.C. § 3717).

Decision

The Board finds that a legally enforceable debt exists in this matter.

Beverly M. Russell
BEVERLY M. RUSSELL
Board Judge