



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

September 27, 2023

CBCA 7776-DBT

In the Matter of ZYKEL F.

Zykel F., 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.

The petitioner in this debt collection matter does not contest her responsibility for an automobile accident involving a General Services Administration (GSA) vehicle that occurred on April 26, 2021. She instead contends that the payments which GSA demands to cover the damage to the GSA vehicle that she accidentally caused would create such a burden that the Board should intervene to create a realistic payment schedule. In response to questions that the Board raised about GSA's response to the petitioner's submission, however, GSA has now realized that the amounts that it asked the Board to allow it to collect through administrative wage garnishment are significantly overstated. In fact, reviewing the materials that GSA has presented to the Board, it appears clear that the petitioner has already overpaid the debt that resulted from the automobile accident at issue in this matter. As a result, the Board finds not only that GSA has no basis for administratively garnishing the petitioner's wages but that GSA must refund some of the monies that the Federal Government previously but erroneously collected.

Background

On April 21, 2021, an employee of the Federal Bureau of Investigation was driving a GSA vehicle westbound on North Bend Road in Cincinnati, Ohio. The petitioner, driving a vehicle heading the opposite direction, attempted to make a left turn into a gas station in front of the GSA vehicle. The GSA vehicle unavoidably ran into the petitioner's car.

According to a police report taken that day, the petitioner admitted to fault for the accident and was issued a citation for failing to yield the right of way in violation of Ohio Rev. Code Ann. § 4511.42 (West 2018). The petitioner contests neither responsibility for the accident nor GSA's assessment of \$3477.21 as the actual costs that the agency incurred to have its vehicle repaired (costs that are supported by an invoice from the auto body shop that performed the repairs).

On June 24, 2021, GSA made an initial demand for reimbursement of the \$3477.21 repair cost. In its demand letter, GSA informed the petitioner that, if the debt was not paid within thirty days, interest would begin to accrue and that, if the debt was not paid within ninety days, a penalty of 6% per annum would begin to accrue. In the letter, GSA also indicated that, if the debt was not timely paid, GSA would be entitled to assess administrative costs (including a \$10 monthly fee for each month in which the claim is past due as well as "[d]ebt collection agency fees"). GSA sent additional demand letters on August 17 and September 21, 2021, without response from the petitioner.

By November 18, 2021, GSA had added interest charges totaling \$11.60, administrative charges of \$30, and a penalty of \$34.78—a total of \$76.38—to the amount owed. At that point, GSA forwarded the debt to the Department of the Treasury (Treasury) for further collection efforts.

On November 22, 2022, a little over a year after GSA's collection referral, a contractor hired by Treasury to assist with collections, Transworld Systems Inc. (Transworld), sent the petitioner a notice of intent to initiate administrative wage garnishment upon GSA's behalf to collect the unpaid debt. In the notice, Transworld identified the then-existing amount of the petitioner's liability as follows:

- (1) The principal amount of \$3477.91;
- (2) Accrued interest of \$46.41 (at an annual interest rate of 1.0%);
- (3) Accrued penalty charges of \$243.40; and
- (4) "Administrative costs" of \$1167.30.

The total amount of the petitioner's indebtedness, adding those amounts together, was identified as \$4934.32. The notice indicated that the petitioner could request a hearing to challenge the validity or amount of the debt or, if the proposed garnishment would cause financial hardship, to request adjustment of the garnishment amount. It further provided that, if the petitioner provided Transworld with a written request for a hearing before December 1, 2022, wage garnishment would be deferred until the hearing was conducted and a decision issued.

Although the petitioner did not respond by the December 1, 2022, deadline identified in Transworld's notice, she submitted a response on January 5, 2023, requesting a hearing on the proposed administrative wage garnishment in accordance with 41 CFR 105-57.005 (2022). She did not contest that she owed the debt but asserted that the proposed garnishment would cause financial hardship. Treasury then referred this matter back to GSA, which, on May 23, 2023, submitted this matter to the Board for the requested hearing.

In its initial proceedings order dated June 13, 2023, the Board directed GSA to justify the \$4934.32 debt amount being claimed, which represented an increase from the \$3477.21 damage amount that GSA had originally sought in June 2021, and to "quantify any amounts already collected on the debt." In its response to that order, filed July 6, 2023, GSA reiterated that the total amount for which the petitioner was responsible was \$4934.32, but GSA represented that the Government had already collected payments of \$253.03, \$278.90, and \$3474.20 (totaling \$4006.13) that should be applied against the total \$4934.32 amount that GSA was claiming.

Subsequently, by order dated August 25, 2023, the Board expressed confusion "about the amount of debt that GSA is now seeking and the basis of what appears to be a rather extraordinary amount of fees added to the original [\$3477.91] costs of repairing the automobile allegedly damaged by the petitioner." The Board explained as follows:

Both Transworld's November 2022 payment demand and GSA's July 2023 position paper identify what appear to be extremely high administrative charges imposed mainly by the Department of the Treasury (on top of and in addition to the amount of the actual damage to the vehicle in question here). The "administrative costs" and "accrued penalty charges" that Transworld identifies in its November 2022 debt notice amount to almost 30% of the original principal debt. GSA's position paper identifies "Treasury interest/fees" of, again, almost 30% of the original principal debt. We see no explanation anywhere in the submissions to the Board of the basis for these additions to the principal debt or any effort to justify the size of the additions. Given that the Transworld payment demand identifies the interest rate being applied to [the petitioner's] debt as 1.0%, the dollar amounts that have been added to [the petitioner's] principal debt must arise mainly from something other than interest, given that the accident in question occurred only about two years ago. GSA shall break down, provide detail about, explain the basis for, and justify the "fees," "administrative fees," and "penalty charges" that are included in Transworld's notice of debt and/or GSA's administrative wage garnishment request. GSA shall also provide documentary support for these charges. If there is a statutory or regulatory basis for the Government's

assessment of these costs or charges against [the petitioner], GSA shall provide appropriate citations.

In its response on September 7, 2023, GSA indicated that Treasury had collected a total of \$4006.13 from the petitioner through two administrative wage garnishments and a tax refund offset on January 18, February 3, and February 23, 2023, respectively. Because those collections had occurred after Transworld issued its notice of intent to initiate administrative wage garnishment on November 22, 2022, they were not reflected in Transworld's notice. GSA did not explain, however, why it had not identified those collections when it filed the petitioner's hearing request with the Board in May 2023. Nevertheless, GSA acknowledged an error in its original calculation of the fees assessed on Treasury's behalf and indicated that it was now limiting the amounts being claimed in this matter, in addition to the original \$3477.21 damage claim, to the following: (1) \$76.38 that GSA had assessed in interest, penalties, and administrative fees before forwarding the debt to Treasury for collection on November 18, 2021; and (2) "Treasury Interest/Fees" totaling \$457.83 that Treasury had assessed after the referral. GSA broke down the \$457.83 "Treasury Interest/Fees" figure as follows: (1) \$44.76 in interest that accrued between November 24, 2021, and February 23, 2023; (2) \$268.52 in penalty fee assessments that accrued during the same period; and (3) \$144.55 for what was identified only as several upward "debit adjustment[s]" in January and February 2023. Recalculating the total amount of the damage to which the Government was entitled, inclusive of interest, penalties, and administrative fees, following those adjustments, GSA indicated that it was now seeking a total of only \$4011.42 (rather than the originally claimed amount of \$4934.32) as compensation for the damage caused by the petitioner.

In explaining the reduction in the dollar amounts that it was claiming, GSA represented that, in Transworld's notice dated November 22, 2022, Transworld (on Treasury's behalf) "appears to have included 'Potential DMS'¹ fees, . . . which did not seem to apply because the majority of the debt was paid through a withholding of a tax return rather than through collections, leading to less fees being withheld." After acknowledging that Treasury had already collected \$4006.13 of the \$4011.42 debt, GSA represented that a due-and-owing balance of \$5.29 remained, an amount that GSA believed but could not confirm was too small for Treasury to continue pursuing.

Discussion

An administrative wage garnishment is authorized by the Debt Collection Improvement Act of 1996, as amended, 31 U.S.C. § 3720D (2018), and applicable

¹ GSA's submission of September 7, 2023, does not define the acronym "DMS."

regulations, 31 CFR 285.11 and 41 CFR 105-57.001 through 105-57.014. Pursuant to 31 CFR 285.11(f)(8)(i) and 41 CFR 105-57.005(f)(1), in any administrative wage garnishment proceeding, GSA has the initial burden of establishing the existence and amount of the asserted debt. Once GSA meets that burden, the individual challenging the debt must establish by a preponderance of the evidence that no debt exists and/or that the amount of the debt is in error. 31 CFR 285.11(f)(8)(ii); 41 CFR 105-57.005(f)(2).

Here, the petitioner does not dispute being responsible for the \$3477 cost of repairing the GSA vehicle, eliminating GSA's obligation to prove that damage amount. Further, GSA's and Treasury's imposition of interest charges and penalties are permissible under the Debt Collection Act, which generally authorizes agencies to assess interest, late payment penalties (of up to 6% per annum), and administrative costs on delinquent debts owed by "persons" to the United States after appropriate notice is provided to the debtor. 31 U.S.C. § 3717. Nevertheless, GSA has not explained the basis of "debit adjustment[s]" that Treasury's contractor, Transworld, recorded totaling \$144.55. Those adjustments appear to be random and sporadic increases to the petitioner's debt that, according to GSA's documentary support, were imposed for unknown reasons between January 18 and February 23, 2023. GSA has provided us with no justification for them. In our order dated August 25, 2023, we directed GSA to "provide detail about, explain the basis for, and justify the 'fees,' 'administrative fees,' and 'penalty charges' that are included in Transworld's notice of debt and/or GSA's administrative wage garnishment request," as well as to "provide documentary support for these charges." GSA failed to provide any support for the "debit adjustment[s]." Accordingly, we find that GSA has failed to meet its burden of establishing entitlement to recovery of the "debit adjustment[s]."

The total amount of debt for which GSA has established the petitioner is responsible is \$3866.87 (representing the total of the original \$3477.21 automobile damage amount; \$76.38 in interest, penalties, and administrative costs imposed by GSA in 2021; \$44.76 in additional interest charges that Treasury recorded in early 2023; and \$268.52 in additional penalties that Treasury recorded in early 2023). The Government has already collected \$4006.13 from the petitioner, an overcollection of \$139.26 that the petitioner is entitled to be refunded.

GSA tells us that we cannot question any penalties or fees that Treasury imposed when it was responsible for collections (such as the upward "debit adjustment[s]" that Treasury, through its contractor, recorded) because "no court has jurisdiction to review Treasury's actions to offset a federal tax refund payment," citing several United States district court decisions in support. Yet, the "debit adjustment[s]," though recorded by Treasury's contractor, were assessed as part of a collection effort that GSA initiated, and it is GSA, not Treasury, that is now seeking to recover those "debit adjustment[s]" through administrative wage garnishment. Even when a district court finds that a taxpayer cannot

challenge Treasury's actions in effectuating an offset requested by another agency against a debtor's tax refund payment, that limitation "does not prohibit lawsuits . . . against the *originating* agency over the validity of the request to execute an offset." *Thomas v. Bennett*, 856 F.2d 1165, 1167 (8th Cir. 1988) (emphasis added); see *Bianco v. Internal Revenue Service*, No. 93-CIV-3953, 1994 WL 538020, at *2 (S.D.N.Y. Oct. 3, 1994) ("What this means in practice is that taxpayers . . . who object to the setoff of their tax overpayments may sue only the agency that requested the setoff, not the [Internal Revenue Service]."). Further, in this matter, we are not serving in the same kind of role as a district court. As the hearing official under GSA's administrative wage garnishment regulations, we are specifically tasked with reviewing challenges to the viability and amount of GSA-assessed debts. 41 CFR 105-57.002(o), (p). Any argument that we are barred from reviewing challenges to the amount of the debt that GSA is seeking to collect through administrative wage garnishment would conflict with that regulatory authority.²

Decision

For the foregoing reasons, GSA's request for administrative wage garnishment is denied. The petitioner's debt to GSA has been paid in full, and the Board permanently suspends collection of any further debt from the petitioner arising out of the automobile accident at issue in this matter. Further, the petitioner is entitled to a refund of \$139.26, representing the amount that the Government has overcollected on the debt.

Harold D. Lester, Jr.

HAROLD D. LESTER, JR.
Board Judge

² Under GSA's theory, had GSA not voluntarily acknowledged to the Board that Treasury's contractor, Transworld, had incorrectly added several hundred dollars in "Potential DMS" fees to the petitioner's debt, and had GSA not taken steps to correct that recording error, there would be no administrative process through which the petitioner could have challenged the imposition of those fees, given that Treasury (through its contractor), rather than GSA, had assessed them. That would conflict with the requirements of 31 U.S.C. § 3720D(b)(5)(A), 31 CFR 285.11, and 41 CFR 105-57.005.