



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

December 10, 2024

CBCA 8177-DBT

In the Matter of BIBIANO M.

Bibiano M., Petitioner.

Aaron J. Pound, Office of General Counsel, General Services Administration, Washington, DC, appearing for General Services Administration.

BEARDSLEY, Board Judge (Chair).

The petitioner requested a hearing to dispute the collection, through administrative wage garnishment, of a debt that the General Services Administration (GSA) asserts he owes due to the petitioner's early resignation from his position with GSA. After receiving a recruitment incentive, the petitioner voluntarily resigned after serving only seven of the thirty-six months required by his service agreement. The hearing official finds that the petitioner is liable for the full amount of the debt and therefore denies the petition.

Background

On March 22, 2022, the petitioner signed a service agreement with a recruitment incentive to work as a facility manager for GSA in Laredo, Texas. GSA paid the petitioner a \$10,000 lump-sum payment as a recruiting incentive on the condition that the petitioner agree to complete a minimum of thirty-six months of service with GSA, beginning on March 13, 2022, and ending on March 16, 2025. The petitioner signed the service agreement, which stated in section 8 that "I understand that if I fail to complete the period of employment stated above in this agreement, for reasons unacceptable to the agency, I shall be indebted to the Federal Government and shall repay the bonus on a pro rata basis." GSA's Submission, Exhibit A, Petitioner's Service Agreement for Receipt of a Recruitment Incentive at 2.

Upon moving to Laredo to begin his position with GSA, the petitioner alleged that he encountered issues finding affordable and acceptable housing. The petitioner indicated that “[t]here were apartments available but in the Southeast area which by all accounts was not a favorable location for a government employee to live in.” Petitioner’s Submission of Supporting Documents at 1. As a result, the petitioner temporarily stayed in an Airbnb while he continued to look for housing. The petitioner subsequently decided to live in a recreational vehicle (RV) that he already owned and transported to Laredo. According to the petitioner, however, it cost more than expected to transport and outfit the RV for long-term habitability. The petitioner provided a statement from the Vaquero Village R.V. Park verifying that the petitioner had a year-long contract (March 3, 2022, to March 3, 2023) to occupy a lot in the park. The petitioner also provided two receipts (dated March 11, 2022, and February 6, 2023) showing the amount it cost to tow the RV. The petitioner asked for a transfer to the El Paso, Texas, area to be closer to his father, who had health issues, but GSA denied the petitioner’s request for a transfer because there were no positions available.

On November 19, 2022, the petitioner voluntarily resigned from GSA due to the housing issues in Laredo and the denial of his transfer to El Paso. By this time, the petitioner had only completed seven out of the thirty-six months of service in Laredo for GSA. Thereafter, GSA informed the petitioner that under the service agreement and in accordance with 5 U.S.C. § 5753 (2018), the petitioner owed \$7710.88 to GSA as pro-rated repayment of the recruitment incentive.

After several demands to the petitioner by GSA for payment of the debt, on April 3, 2024, the Department of the Treasury informed the petitioner of its intent to initiate an administrative wage garnishment of the petitioner’s wages in order to pay off the debt to GSA. On April 10, 2024, the petitioner requested a hearing, asserting that he did not owe the full amount of the debt. Thereafter, the petitioner made payments against his debt in the amount of \$1748.78, leaving a remaining debt balance of \$5962.10. The hearing official held a telephonic hearing at which GSA and the petitioner stated their respective positions.

Discussion

GSA’s wage garnishment regulations provide the “standards and procedures for GSA to collect money from a debtor’s disposable pay by means of administrative wage garnishment to satisfy delinquent non-tax debt owed to the United States.” 41 CFR 105-57.001(a) (2023).¹ As permitted by the regulations, the debtor requested “a hearing in

¹ “These standards and procedures are authorized under the wage garnishment provisions of the Debt Collection Improvement Act of 1996, codified at 31 U.S.C. 3720D,

accordance with 41 CFR 105-57.005 . . . concerning the existence and/or amount of the debt.” *Id.* 105-57.004 (b)(3). At the hearing, GSA had the initial burden of establishing the existence and amount of the asserted debt. *Id.* 105-57.005(f)(1). GSA met this burden by providing sufficient documentation corroborating the existence of the debt and its pro-rated amount.

Under governing regulations, once GSA meets its initial burden, the individual challenging the debt (petitioner or debtor) must establish “by a preponderance of the evidence that no debt exist[ed] or that the amount of the debt [was] incorrect.” *Id.* 105-57.005 (f)(2). The petitioner may also “present evidence that the terms of the repayment schedule [were] unlawful, would cause a financial hardship to the debtor, or that collection of the debt [could] not be pursued due to operation of law.” *Id.*

Here, the petitioner confirmed during the hearing that he had received the recruitment incentive on the condition that he would remain employed by GSA for thirty-six months and that he voluntarily resigned from GSA after seven months of service. The petitioner did not challenge the debt amount or indicate that he could not pay the debt. Instead, he argued that the reasons for his resignation—the unforeseen and unexpected difficulties and costs he encountered finding housing in Laredo and GSA’s failure to transfer him to El Paso so that he could be closer to his father—were, in effect, beyond his control and, therefore, should have been acceptable to GSA.

“This Board has recognized that ‘[i]t is within an agency’s discretion to determine whether a separation from service which appears to be voluntary was for a reason beyond the employee’s control and acceptable as a reason for not fulfilling the terms of a service agreement.’” *David S. Garber*, CBCA 2400-RELO, 11-2 BCA ¶ 34,831, at 171,372 (quoting *Paula A. Shimata*, CBCA 1135-RELO, 08-2 BCA ¶ 33,901, at 167,775, and citing *Erik E. Ehrenborg*, CBCA 1678-RELO, 10-1 BCA ¶ 34,370). “We will not question the agency’s exercise of its discretion so long as it has a reasonable basis.” *Id.* (citing *Carlos N. Lacy*, CBCA 1059-RELO, 08-2 BCA ¶ 33,887, at 167,715); *see Jose A. Baeza*, CBCA 2097-RELO, 10-2 BCA ¶ 34, 575, at 170,462. “[U]nless an employee can show that his resignation was effectively forced by the agency without reasonable grounds, the resignation will be presumed to have been voluntary.” *Kerry Flood*, GSBCA 16806-RELO, 06-1 ¶ 33,279, at 164,999. Moreover, “[t]he Board has found that [a] voluntary resignation is not a matter outside of the control of [an] employee[,]’ even a resignation based on a claimant’s concerns about his or her workplace environment or personal issues.” *Karl D.*, CBCA

and Department of the Treasury Wage Garnishment Regulations at 31 CFR 285.11.” 41 CFR 105-57.001(b).

7520-RELO, 23-1 BCA ¶ 38,277, at 185,867 (quoting *Andrea L. LeMay*, CBCA 4421-RELO, 15-1 BCA ¶ 35,946, at 175,675, and citing *Kenneth Evans*, CBCA 3446-RELO, 14-1 BCA ¶ 35,484 at 173,963 (2013) (denying claim despite claimant's assertion that he was dealing with "insurmountable personal reasons" and workplace issues at the time of his resignation); *David S. Garber*, 11-2 BCA at 171,372.

GSA had a reasonable basis to determine that petitioner's separation from service was voluntary and for reasons not acceptable to GSA. The petitioner resigned after seven months due to workplace environment and personal issues that were not beyond his control. Because petitioner failed to complete the period of employment required for reasons not acceptable to GSA, petitioner is indebted to GSA for the pro rata amount of the recruitment incentive.

The petitioner has not established by a preponderance of the evidence that no debt exists or that the amount of the debt is incorrect. Additionally, the petitioner has provided no evidence that the terms of the repayment schedule are unlawful, would cause a financial hardship to the debtor, or that collection of the debt is barred by operation of law. Therefore, the petitioner is liable for the full remaining debt to GSA of \$5962.10 (\$7710.88 (pro rata amount of the recruitment incentive) less the \$1748.78 that the petitioner already paid).

The petitioner has indicated that he can pay the debt in full. The hearing official, therefore, encourages GSA to explore the feasibility of the petitioner paying the debt directly to GSA to avoid the involvement of and fees charged by the Department of the Treasury in collecting the debt.

Decision

The petition is denied. The debt is valid, and the petitioner owes GSA \$5962.10.

Erica S. Beardsley

ERICA S. BEARDSLEY

Board Judge