



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

June 6, 2024

CBCA 7783-DBT

In the Matter of AMANDA H.

Amanda H., Petitioner.

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

O'ROURKE, Board Judge.

Petitioner challenges the amount of a debt which respondent, the General Services Administration (GSA), turned over to the Department of the Treasury (Treasury) for collection by garnishment. Petitioner does not dispute liability for the debt but complains that there is no explanation for why the debt increased from \$13,445 to \$22,658, particularly because her wages had been garnished for an unspecified period of time. Since GSA has established the existence of a debt, but has not supported the full amount claimed, petitioner's debt shall be reduced to \$11,807, minus amounts already paid by petitioner.

Background

On February 16, 2018, petitioner was traveling on I-75 in the Sarasota, Florida, area when traffic came to an abrupt stop. Petitioner failed to stop in a timely manner, and her vehicle rear-ended the vehicle in front of her, which was a government vehicle operated by a Federal Special Agent conducting official business. The force of the collision then caused the government vehicle to rear-end a third vehicle in front of it. A police report determined that petitioner was "inattentive" and that petitioner had operated her vehicle in a "careless or negligent manner." The police issued petitioner two citations in connection with the accident – one for careless driving and one for failure to provide proof of insurance as required by Fla. Stat. § 316.066(1)(d) (2023).

Petitioner's vehicle was a 2006 Pontiac G-6 Sedan, which she purchased from an acquaintance on August 1, 2017. At the time of the accident, petitioner had not yet applied for a certificate of title nor had she purchased insurance coverage for the vehicle. The government vehicle, a 2014 Chevrolet Equinox, sustained damage to both the front and rear of the vehicle. The agency provided the Board with a \$13,107.88 estimate for the repair of the government vehicle. In light of the cost to repair the vehicle, the "high probability of additional hidden damage, structural damage that may jeopardize safe operation, and/or required repairs that may affect future reliability and safety," the agency declared the government vehicle a total loss and sold it at auction for \$3600.

On May 3, 2018, GSA sent petitioner a letter about the accident which stated, "We have determined that you are liable for the damages to the government vehicle, totaling \$13,445. This includes towing charges of \$1,145 and an appraisal fee of \$.00 [sic]." The letter demanded that either petitioner or her insurance company send a check to GSA for the full amount within thirty days or risk incurring interest, penalties, and possible administrative charges.

GSA provided two receipts to substantiate the \$1,145 towing charges, one from Jackson's Auto Body in the amount of \$648 and one from Norm's Towing in the amount of \$497. The receipt for Jackson's Auto Body reflected three individual charges: \$35 for an "admin fee," \$475 for towing, and \$138 for three hours of an unknown activity at \$46 per hour (the nature of the activity cannot be determined due to the indecipherable handwriting). Jackson's Auto Body is located in Sarasota, the same city where the accident occurred. Norm's Towing subsequently towed the vehicle 144 miles from Jackson's Auto Body to Orlando, Florida.

GSA also provided a National Automobile Dealers Association (NADA) printout showing several retail values, including a "Rough Trade-In" value of \$13,625, an "Average Trade-In" value of \$14,875, and a "Clean Trade-In" value of \$15,900. GSA provided a close-out information sheet showing that the total amount of initial debt was calculated by adding the two towing fees to the "Clean Trade-In" NADA retail value, for a sum of \$17,045, and then deducting \$3600 for the amount received at auction.

By letter dated July 14, 2022, Treasury issued petitioner a "Notice of Intent to Initiate Administrative Wage Garnishment Proceedings" in the amount of \$22,658.29 and identified GSA as the federal agency to which petitioner owed the debt. The letter explained that the debt had not been paid and referenced an earlier letter that GSA sent petitioner explaining the basis for the debt. The letter also provided petitioner with an opportunity to request a hearing regarding the validity or amount of the debt. The letter did not provide an explanation of how the principal of \$13,455 had been impacted by interest, penalties, or administrative fees, and it did not provide the applicable interest rate.

Petitioner responded to the letter on December 26, 2022. In her letter, petitioner stated, “You were garnishing my wages when I was previously employed.” Petitioner posed numerous questions to Treasury regarding the validity of the debt’s existence and the amount of the debt. Specifically, petitioner asked about the identity of “the creditor,” such as whether this was the “original creditor” or if the debt had been transferred to a new creditor. She also asked for an itemization of all fees and charges, including the dates and amounts of the charges and any interest applied. Petitioner questioned whether previous payments and reductions from the “original creditor” were applied to the total and asked about the creditor’s authority to assess the charges. GSA treated the letter as a request for a hearing under 41 CFR 105-57.005 (2023).

On June 8, 2023, the agency forwarded petitioner’s request for a hearing to the Board, which docketed the request the same day. A call was held between the Board and the parties on July 11, 2023, to discuss the case. Petitioner did not question her liability for the accident. Rather, she had questions about the amount of the debt, including the amount of previous garnishments and the future payback schedule. Petitioner shared information about her current financial status to ensure she could manage the debt. She stated that she is a single parent of an eight-year old and is trying to pursue a degree in order to gain financial stability. She also stated that when she was working as a waitress, her pay was being garnished to satisfy the debt, which was an untenable situation for her financially. Petitioner was audibly distraught during the discussion. GSA offered to work with petitioner to complete financial hardship forms and review the amount of the debt in light of the lack of information about how the debt was calculated. The Board stayed the proceedings to give the parties time to reach an agreement on a repayment schedule.

On November 6, 2023, GSA informed the Board that petitioner had provided documentation pertaining to her financial status and that GSA was “reviewing the information to determine the outcome under the financial hardship request.” Petitioner stated that she had no income and had no income tax returns to verify the lack of income. She indicated she had one bill, but the nature of that bill was not clear. On the Consumer Debtor Financial Statement, petitioner showed less than \$2000 in savings. GSA followed up with petitioner to establish an agreement but did not hear back from petitioner. The Board followed up with the parties on the status of their agreement on November 6, 2023, December 28, 2023, January 10, 2024, and March 13, 2024. Only GSA responded to the Board’s inquiries.

This decision was reached after telephone conferences with the parties and a paper hearing pursuant to 41 CFR 105-57.005(b)(4).

Discussion

When a crash or accident occurs between the driver of a government vehicle and another driver in which there is “any indication” that the driver of the non-government vehicle is at fault, GSA is authorized to take action to initiate recovery of the Government’s claim. 41 CFR 101-39.404. If the individual does not make the required payments, agencies are permitted to garnish wages in order to satisfy the debt. 31 U.S.C. § 3720D(a) (2018). The procedures for these administrative wage garnishments are governed by 41 CFR 105-57. The agency has “the burden of establishing the existence and/or amount of the debt.” 41 CFR 105-57.005(f)(1). In order to garnish a debtor’s wages to satisfy a debt based on tort liability, this Board has recognized that state law determines liability “absent a finding that federal law should control.” *Derric J.*, CBCA 7134-DBT (Aug. 17, 2021); *see also Lydia C.*, GSBCA 16526-DBT, slip op. at 7 (Nov. 24, 2004) (providing an explanation of the same rule by one of our predecessor boards).

In this case, GSA has provided ample evidence of the existence of the debt. The police report unambiguously placed responsibility for the accident with petitioner, and petitioner did not dispute liability during the July conference call with the Board. The only issue in dispute in this case is whether the amount of the debt is appropriate under state law. Under Florida law, “precise proof as to the exact amount” of damages is not required, but the evidence provided must “reach the level of satisfying ‘the mind of a prudent and impartial person.’” *Asgrow-Kilgore Co. v. Mulford Hickerson Corp.*, 301 So. 2d 441, 445 (Fla. 1974) (quoting *Twyman v. Roell*, 166 So. 215, 218 (Fla. 1936)).

GSA’s selection of the “Clean Trade-In” value instead of the “Average Trade-In” value does not meet the “prudent and impartial person” test required by Florida law. GSA has provided no evidence of the vehicle’s pre-crash condition to justify its selection of the higher “Clean Trade-In” value. Prior GSA regulations specifically directed the agency to charge “the *average* NADA retail value plus all other accident costs.” GSA Order Federal Supply Service (FSS) P 5600.8, ch. 9, pt. 2, para. 14. (Aug. 1, 1994) (emphasis added), *canceled by* Memorandum from George Hauswirth, Federal Acquisition Service Clearance Officer, to Jane Groat, GSA Directives Management (Dec. 21, 2011) (on file with GSA InSite). No other policy has been published with alternative standards. An “impartial person” deciding between trade-in values would select the “Average Trade-In” value unless there was evidence the vehicle’s condition was above or below average. Accordingly, the vehicle’s value for debt purposes should have been \$14,875, the average trade-in value, instead of \$15,900.

The towing bill from Jackson’s Auto Body also does not meet the “prudent and impartial person” test. Jackson’s Auto Body charged \$475 for towing the government vehicle from the scene of the accident to its shop—a distance of only twelve miles. By

contrast, Norm's towing charged \$497 to take the same vehicle well over 100 miles to Orlando, Florida. A "prudent" person would not pay Jackson's Auto Body such a high cost when an evidently cheaper alternative—Norm's Towing—was available. There is no explanation in the record for why the two towing fees are close in amount when the distances are substantially different. Accordingly, GSA cannot pass this imprudent financial decision to the petitioner by means of debt. Because the Board is unable to determine the nature of the \$138 fee at Jackson's Auto Body, that amount also cannot satisfy the "prudent and impartial person" test, as a prudent person would not pay for an unknown service. Therefore, the amount of debt obligation arising from Jackson's Auto Body will be limited to the \$35 administrative fee.

Further, GSA and Treasury have provided no information on how the amount of the debt changed over time. Although it is apparent that some increase occurred because of fees and penalties, the Board has not been provided with the interest rate used to calculate the debt despite numerous requests for the information. Nor has the Board been provided with the amount of payments that petitioner has already been subjected to via garnishment at her prior place of employment. Without knowing this information, it is impossible for the Board to re-calculate a new amount owed that reflects the reduced principal amount discussed in the previous two paragraphs. Accordingly, the total debt owed by the petitioner is based on the following substantiated values and calculation: "Average Trade-In" value of the car (\$14,875), the towing fee from Norm's Towing (\$497), and the administrative fee from Jackson's Auto Body (\$35), less the value obtained at auction (\$3600). The total amount of debt owed by the petitioner is thus set to \$11,807, less any payments already made by petitioner.

Although the petitioner claims she does not have any tax returns to provide, she has completed the financial hardship form. If the petitioner's income represented by her financial hardship form is accurate, then she would not be required to file a tax return at all. *See* Internal Revenue Service, Publication 501: Dependents, Standard Deduction, and Filing Information 2 tbl.1 (2024) (requiring submission of tax returns only for income above \$13,850 for single filers). Financial hardship allows the Government to downwardly adjust the amount garnished to reflect the debtor's financial condition. 41 CFR 105-57.010(c). Accordingly, the Board will adjust the amount garnished based on the provisions of 41 CFR 105-57.009 by directing GSA and Treasury to temporarily suspend garnishment until the petitioner "has been reemployed continuously for at least 12 months." After that point, the amount garnished shall comply with the requirements of 41 CFR 105-57.008(b).

Decision

Based on the foregoing, I find a legally enforceable debt against petitioner of \$11,807, which shall be reduced by any collections the Government has already made via administrative offset or wage garnishment. Garnishment to collect this debt shall not begin until the petitioner has been continuously reemployed for at least twelve months. GSA is authorized to seek collection of this outstanding obligation by means of administrative wage garnishment to the extent authorized by law.

Kathleen J. O'Rourke
KATHLEEN J. O'ROURKE
Board Judge