



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

November 4, 2025

CBCA 8364-DBT

In the Matter of JOSHUA D.

Joshua D., Petitioner.

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

O'ROURKE, Board Judge.

Petitioner disputes a debt for liquidated damages which he incurred in connection with an attempted vehicle purchase through an auction website operated by the General Services Administration (GSA or agency). The agency presented evidence that (1) petitioner submitted the winning offer, (2) the vehicle contract was subsequently terminated for non-payment, (3) a debt was established against petitioner in the amount of \$325, and (4) the agency elected to abandon pursuit of the debt as the cost of collection would exceed the amount of the debt.

Petitioner, a frequent user of the auction website, blamed the non-payment on the auction website's payment system which petitioner contends repeatedly malfunctioned, then timed out, preventing him from completing the transaction. Petitioner further argues that despite his request for a hearing to dispute the debt, the United States Department of the Treasury (Treasury) administratively offset petitioner's tax refund, depriving him of the opportunity to be heard before collection of the erroneous debt. Petitioner seeks repayment of the offset.

Although the agency presented some evidence of the existence of a debt, the agency failed to supplement the record or respond to petitioner's statements. Instead, the agency filed a statement abandoning pursuit of the debt without acknowledging it had already been paid. For these reasons, the Board concludes that the agency failed to meet its burden as to

the existence of the debt and must repay to petitioner \$382.46, the amount offset from petitioner's tax refund.¹

Background

Winning Contract Bid and Attempted Vehicle Purchase

On June 4, 2024, petitioner utilized the GSAAuctions.gov website to bid on a vehicle offered for sale through a virtual public auction. Petitioner placed the winning bid for the vehicle and was notified of the same by email the following day. The notice provided petitioner with the details of his "contract award," including the sale lot number (3-1-QSC-I-24-537-005), the contract number (GS03F24FBEQ808), the lot name (2018 Polaris Ranger XP), and the bid/award amount (\$6100).

The letter informed petitioner that he "must pay for this property within 2 business days from the date and time you received this notification." The letter further cautioned that failing to pay or remove the property in a timely manner constituted a breach of contract that would result in the termination of the contract and the assessment of liquidated damages. No further information regarding termination or liquidated damages was provided.

On June 7, 2024, petitioner attempted to pay for the vehicle in full but was unsuccessful due to issues with the online payment system. After numerous failed attempts to purchase the vehicle, petitioner contacted GSA by phone to resolve the payment issue but said that he was unsuccessful in reaching anyone to assist him with the payment issue prior to the expiration of the allotted time for payment. Petitioner reiterated that he wanted to complete the purchase of the vehicle and tried to purchase the vehicle and but for the auction website's payment system not working, he *would* have purchased it. Petitioner added that

¹ Because we have determined that petitioner is entitled to a refund of the monies that Treasury collected through administrative offset, we need not consider whether the agency's debt collection notice, which involves a debt that normally would be established through the procedures set forth in the Contract Disputes Act (CDA), 41 U.S.C. §§ 7101–7109 (2018), was proper and enforceable. In assessing liquidated damages, the GSA sales contracting officer did not notify the petitioner of any appeal rights under the CDA, and Treasury collected the debt without the agency's issuance of a CDA-compliant government claim. Our decision here should not be read as authorizing the Government to use debt collection procedures to collect contract debts outside of the process envisioned by the CDA.

he had used the GSA auction website many times in the past to purchase vehicles and never had a problem until this particular purchase in June 2024.

Termination of Contract for Non-Payment

On June 13, 2024, petitioner received a “Termination of Contract Notice for Non-Payment” from a GSA sales contracting officer which established a government claim against petitioner for liquidated damages in the amount of \$325. The notice stated:

Your contract(s) are hereby terminated. Liquidated damages in the amount of \$325 must be remitted by you within 30 days of the date of this notice. If you fail to pay the amount due in 30 days, late charges will be assessed. Until this default is cured, you may be found non-responsible and ineligible to receive future contracts.

The final paragraph stated, “Your file has been turned over to our finance office for further collection action. If you fail to pay the amount due in the prescribed time, interest, penalty, and administrative costs will be assessed in accordance with the federal government’s policy and procedures.” The termination notice included payment instructions to pay the liquidated damages assessment electronically or by telephone but *did not* provide petitioner with the option to dispute or appeal the agency’s claim.

Demand for Payment Letters and Petitioner’s Response

On July 24, 2024, petitioner received a demand letter from GSA in the amount of \$326.08. The demand letter again provided payment instructions for the debt (liquidated damages assessment) and informed petitioner that interest and penalties would continue to accrue on the claim until the debt was paid. It also warned petitioner that “GSA reports delinquent accounts to the U.S. Treasury Financial Management Service Center for collection action and administrative offset. The amount of this claim may be offset via the Treasury Offset program from any funds payable to you by the Federal Government.” A debtor’s rights notice was attached to the letter which described petitioner’s right to appeal the debt. However, no instructions for such an appeal were included in the notice. On August 27, 2024, petitioner received a second demand letter with largely the same information. The primary difference between the two demand letters was the interest, which had doubled from \$1.08 in July 2024, to \$2.16 in August 2024, increasing the total amount of the debt to \$337.16.

On October 28, 2024, petitioner sent a statement to the agency disputing the debt. The statement read, “I received a letter stating that I owe \$458.03 to the U.S. Department of

Treasury as a result of activity on the General Services Administration Auction website. I believe this is a mistake and that I do not owe this amount. You may contact me at the information below.”² The Bureau of the Fiscal Service within Treasury notified GSA on December 12, 2024, that petitioner disputed “the amount of the debt.” The notice identified the principal amount as \$325.

Treasury’s Offset of Petitioner’s Tax Refund and GSA’s Docketing Request

Notwithstanding petitioner’s dispute of the debt, petitioner received a letter from Treasury, dated January 6, 2025, informing petitioner that the Bureau of the Fiscal Service applied all or part of petitioner’s tax refund to cover the “delinquent debt that you owe.” The offset letter stated that \$382.46 of petitioner’s refund was applied to the debt. Meanwhile, petitioner’s dispute request was processed by GSA, and on February 27, 2025, GSA asked the Board to docket this petition. GSA attached supporting documents to the docketing request.

On March 4, 2025, an initial order on proceedings was sent to the parties which summarized the case and informed GSA that, as the party with the burden of proof, GSA had to establish both the existence of the debt and the amount. The hearing official established March 31, 2025, as the deadline for submission of any additional evidence by GSA to prove that petitioner incurred this debt, as well as to explain the differences in the amount of the debt as alleged by various demand letters and notices.

GSA’s Decision Not to Pursue the Debt

Instead of responding with additional evidence, agency counsel filed a statement on March 11, 2025, titled “GSA Submission” which stated that GSA “has determined that pursuing collection of this debt is not in the best interests of the government.” Because no further information was included in GSA’s submission, it was unclear whether GSA ceased collection because the debt had already been paid. Since petitioner disputed the existence of the debt and was seeking repayment of the amount offset from his tax refund, the case could not simply be dismissed based on the agency’s decision to stop pursuing the debt.

² Petitioner did not provide a copy of the letter that he referenced in his statement, so the Board cannot verify whether the debt amount he identified (\$458.03) consisted of additional penalties and interest. The Board also notes that this amount (\$458.03) is inconsistent with other sums in the record that purportedly reflect the same debt.

A telephonic hearing was held on April 2, 2025, to address the agency's submission, to hear from petitioner regarding the alleged debt and the subsequent offset of his tax refund, and to determine the next steps in this case. During the call, the hearing official asked agency counsel whether the agency was no longer pursuing the debt because it had already been paid. Agency counsel responded that he had no evidence that the debt had been paid but invited petitioner to submit additional evidence confirming payment of the debt. Agency counsel also explained that the reason the agency decided not to collect the debt was that counsel had received an email from a senior manager at GSA stating that the amount of the debt "was too small to pursue" so the agency would not pursue it. Agency counsel further stated that if petitioner had evidence that the debt had been paid, petitioner could submit that evidence into the record and request a refund. Agency counsel added that merely making the request for a refund was not a guarantee that the request would be granted. The parties agreed to review any additional evidence provided by petitioner showing that the debt had been paid and thereafter attempt to resolve the repayment dispute informally.

Petitioner's Evidence of Offset and Request for Repayment

Over the next two weeks petitioner filed the additional supporting documents and explained what occurred with the payment system when he attempted to complete the transaction that gave rise to this dispute. The Board followed up with the parties on several occasions to ascertain whether an agreement had been reached after the agency's review of petitioner's supplemental evidence. Several months went by without resolution so the Board scheduled a follow-up call with the parties to inquire about the status of the parties' discussions. Agency counsel responded that the agency preferred to wait for the hearing official's decision rather than pursue informal resolution of the matter.

Discussion

A Federal agency has a statutory right to collect a "claim" or "debt" – that is, "any amount of funds or property that has been determined by an appropriate official of the Federal Government to be owed to the United States by a person, organization, or entity other than another Federal agency," including "any fines or penalties assessed by an agency" and "other amounts of money or property owed to the Government." 31 U.S.C. § 3701(b)(1) (2018). Debt collection may be undertaken through the use of an administrative offset, such as by reducing the amount of a tax refund. *Id.* § 3716.

GSA has the initial "burden of establishing the existence and/or amount of the debt." 41 CFR 105-57.005(f)(1) (2024). "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.* 105-57.005(f)(2). When the issues in

dispute cannot be resolved by review of the documentary evidence alone, such as when the validity of the claim turns on the issue of credibility or veracity, the hearing official will provide the debtor with a reasonable opportunity for an oral hearing. *Id.* 105-57.005(b)(1).

In response to petitioner's request for a hearing to examine this case for debt collection, GSA filed multiple documents in an effort to satisfy its burden of proof, including "proof of debt, demand letters, and a debtor's rights notice." The proof of debt evidence consisted of the contract award letter and the termination of contract notice which assessed liquidated damages against petitioner for failure to pay. However, no detailed information was provided by the agency regarding the assessment of liquidated damages, such as a notice from the auction website warning users about such assessments, terms and conditions related to why and when liquidated damages are assessed, or how the amounts are established. *Cf. Michael v. General Services Administration*, GSBCA 13117, 95-2 BCA ¶ 27,657. Nonetheless, the contract and subsequent termination notice provide prima facie evidence of a debt, shifting the burden to petitioner to establish that no debt exists or the amount of the debt is incorrect.

Petitioner asserts that there is no debt owed by him to the Government. Specifically, petitioner contends that he was unable to complete the purchase of the 2018 Polaris through no fault of his own. Rather, he maintains that the GSA payment system used by the auction website malfunctioned then timed out, preventing him from completing the purchase. Petitioner states that he made multiple attempts to complete the payment and even called a number on the auction website to get GSA's help with the payment. Petitioner states that none of his efforts were successful before the system timed out. Petitioner further argues that, but for GSA's payment system malfunctioning, he would have completed the transaction and purchased the vehicle – just as he has in the past without any problems. GSA did not dispute petitioner's account of the facts, nor did GSA offer its own factual summary. Instead, when presented with petitioner's statements, GSA abandoned its pursuit of the debt.

Although petitioner provides no additional evidence to corroborate his statement that on June 4, 2024, GSA's payment system malfunctioned, we find petitioner's statements to be credible. Determination of credibility and the weight of evidence are within the discretion of the factfinder. *See Lodge Construction, Inc. v. United States*, 158 Fed. Cl. 23, 38 (2022), ("Credibility determinations are solely within the province of the trial court sitting as the factfinder."). While the auction website could penalize users for failure to follow procedures, petitioner should not be penalized for the website's malfunction, yet that is what happened here. In light of petitioner's evidence and the agency's failure to respond to the same, or offer supplemental evidence to perfect its case, we find that petitioner did not owe GSA \$382.46 and that Treasury erroneously offset petitioner's tax refund in the amount of \$382.46 to satisfy a debt that petitioner did not owe.

Decision

GSA shall repay to petitioner \$382.46.

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