UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

September 19, 2022

CBCA 7320-DBT

In the Matter of LENORA A.

Lenora A., 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 General Services Administration (GSA) has forwarded a request from the petitioner for a hearing to dispute GSA's administrative wage garnishment request in the amount of $7254.61, which GSA is seeking to recover pursuant to the Debt Collection Improvement Act of 1996, 31 U.S.C. §§ 3701–3733 (2018). GSA contends that the petitioner was responsible for an automobile collision that caused damage to a GSA vehicle being driven by an on-duty federal employee and that the petitioner is liable for the resulting damage to the GSA vehicle. The petitioner does not deny at least partial responsibility for the accident, but she believes that a third driver caused at least some of the damage to the GSA vehicle and that the amount being sought is too high. She also asks us to consider the financial hardship that garnishment would cause her as a basis for reducing or eliminating her obligation to pay GSA's damages.

For the reasons set forth below, the Board finds that GSA has established a valid debt. Nevertheless, because GSA has not justified the amount of debt currently being sought, it cannot seek payment through an administrative wage garnishment. To remedy that defect, GSA shall provide the petitioner with a complete accounting of the amount that it is seeking from her, inclusive of a list of all payments that have previously been obtained from her through offsets by the Internal Revenue Service (IRS) or otherwise, and a listing of all

interest and penalty accruals from 2017 through the present that GSA is charging the petitioner.

Although we direct GSA to provide that accounting to clarify the petitioner's debt, we also believe that the financial hardship which the proposed garnishment would impose upon the petitioner precludes GSA from using that method of collection at this time. For the reasons explained below, we suspend GSA's ability to recover the petitioner's debt pending a change in the petitioner's financial status.

Background

On February 15, 2017, the petitioner was traveling eastbound on Interstate 70 (I-70) in the vicinity of Federal Boulevard in Denver, Colorado, when her car, Vehicle 3 (V3), ran into the rear of another privately-owned vehicle, Vehicle 2 (V2), that was stopped in traffic. The impact of the collision pushed V2 into the rear of a GSA-owned vehicle, Vehicle 1 (V1), which was stopped in front of V2. According to a contemporaneous police report taken the day of the accident, the petitioner asserted that she had looked down briefly prior to impact. No physical injuries occurred, but there was significant front-end and rear-end damage to V2 and rear-end damage to V1.

One part of the Denver police accident report indicates that the petitioner received a citation for careless driving. Although another part of the report indicates that citations either were "not issued" or were "refused by [the District Attorney]," the petitioner has clarified that she actually received a citation and does not dispute that she is legally responsible for at least some of the damage from the accident. Nevertheless, the petitioner mentioned during a conference with the Board that the driver of the middle car, V2, was cited by the police for following too closely to the GSA vehicle, and she believes that the V2 driver should share in covering the damages. Yet, the petitioner could not locate or provide to the Board any documentary evidence in support of her belief that the V2 driver was cited. The police report of the accident does not mention any citation issued to the driver of V2, and a box on the report form that should have identified any citation issued to the V2 driver is blank.

A few days after the accident, the driver of V2 submitted an insurance claim to the petitioner's automobile insurance carrier, Loya Insurance Company (Loya), seeking to recover for the damage to her car from the accident. Under the insurance policy that the petitioner had in place at the time of the accident, coverage for property and bodily damage resulting from collisions was limited to $15,000 per occurrence. Loya paid the $15,000 policy limit to the driver of V2.

Subsequently, by letter dated April 17, 2017, GSA notified the petitioner that she was liable for the cost of repairing the GSA vehicle, V1, in the amount of $6291. The notice

indicated that, if the petitioner did not timely pay the debt, the amount due would be subject to interest and penalties that would accrue on a monthly basis. GSA indicated that it had also provided a copy of the letter to the petitioner's insurance carrier. Loya, having already paid out the $15,000 policy limit to the driver of V2, never responded to GSA's letter. Following recent inquiries from the petitioner, however, Loya has indicated that there is no money remaining on the petitioner's insurance policy to cover any of GSA's current payment demand.

On May 15 and June 14, 2017, GSA sent payment invoices to the petitioner, the second of which added $10.48 in interest and a penalty of $31.46 to the original $6291 payment demand. The record does not contain any later notices or indicate whether additional notices were issued. GSA referred the debt to the IRS on September 20, 2017, for collection through administrative offset. Although the petitioner has informed the Board that the IRS collected some money from her through offsets against her tax returns, the record does not indicate how much has been collected or how it affects the total amount now being sought.

On January 10, 2022, after the IRS referred this matter back to GSA for further collection efforts, GSA issued a notice of intent to initiate administrative wage garnishment proceedings to collect $7254.61. Nothing in the record explains why the amount being claimed is $7254.61 or how that amount was calculated. GSA indicated during a telephonic conference that the actual repairs to the GSA vehicle might be higher than the original invoice for $6291, but the record does not contain any documentation supporting increased repair costs beyond the original $6291 figure. To the extent that the increased claim amount reflects additional interest and penalties accruing since June 14, 2017, nothing in the record identifies or breaks down those increased charges.

On January 31, 2022, the petitioner notified GSA that she was requesting a hearing with the Board on GSA's right to garnish her wages. In her hearing request, the petitioner did not dispute responsibility for a portion of the accident or challenge the existence of the debt. Nevertheless, she stated that she "do[es] not owe the full amount of the debt." She also asserted that the proposed garnishment would cause financial hardship. Accompanying her request were copies of her recent earnings statements and a list of her monthly household expenses. GSA forwarded the petitioner's hearing request to the Board on February 8, 2022.

Discussion

The Petitioner's Debt Liability

In response to a challenge to a wage garnishment demand, "GSA will have the burden of establishing the existence and/or amount of the debt" at issue. 41 CFR 105-57.005(f)(1)

(2021). As part of meeting that burden, GSA must, among other things, "prove '(i) that a tort has occurred and (ii) that the alleged debtor is in fact liable for any resulting damages.'" *Tawanda H.*, CBCA 7159-DBT, slip op. at 4 (Oct. 13, 2021) (quoting *Tracy W.*, GSBCA 16520-DBT, slip op. at 5 (Nov. 24, 2004)). If GSA meets its initial burden and "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." 41 CFR 105-57.005(f)(2).

With regard to the existence of a debt, our review of the record shows that the petitioner is responsible for GSA's vehicle repair costs. In Colorado, "[t]he general rule in cases of rear-end collisions is that the driver of the car that follows and overtakes the car in front is presumed to have been negligent." *Bettner v. Boring*, 764 P.2d 829, 832-33 (Colo. 1988). "[A] prima facie case of negligence [is] made out when it [is] established that the [driver approaching the car in front of him or her] struck the rear of [that] stationary vehicle, without any fault on [the stationary vehicle driver's] part." *Bartlett v. Bryant*, 442 P.2d 425, 426 (Colo. 1968). The driver that rear-ended the car ahead of him or her then has "the burden of showing that the collision was not caused by his [or her] negligence" and "arose from factors outside his [or her] control." *Id.* at 426-27.

"In a chain-reaction collision," like the one at issue here, responsibility for damage to the cars in the collision chain "presumptively rests with the rearmost driver." *Cabera v. Thomas*, 145 N.Y.S.3d 42, 42 (N.Y. App. Div. 2021); *see Bettner*, 764 P.2d at 832-33; 8 Am. Jur. 2d *Automobiles & Highway Traffic* § 1081 (2d ed. 2022). If the middle car was fully stopped before being hit in the rear by a third car and being pushed into the rear of the lead car, the driver of the third car will be unable to deflect responsibility for the accident or shift blame to the middle car driver. 8 Am. Jur. 2d, *supra*, § 1081; *see Chang v. Rodriguez*, 869 N.Y.S.2d 427, 428 (N.Y. App. Div. 2008) (applying same comparative negligence rules as Colorado); *Rue v. Stokes*, 594 N.Y.S.2d 749, 750-51 (N.Y. App. Div. 1993) (same).

Here, the police report indicates that the middle car, V2, was fully stopped when the petitioner's car rear-ended it, and the petitioner has presented no evidence to the contrary. The petitioner provides no documentary support for her belief that the Denver police may have cited the V2 driver for following too closely behind the GSA vehicle. Even if that were true, it would not change the petitioner's responsibility for the damage to both V1 and V2, given that V2 was fully stopped at the time of the collision. Because the impact from V3 pushed V2 into the rear of V1, it was the V3 collision into V2 that was the proximate cause of the damage to both V2 and V1. In such circumstances, the petitioner has not identified a basis for us to find that the driver of V2, rather than she herself, is responsible for damage to the GSA vehicle.

The Amount of the Debt

The petitioner questions GSA's calculation of the costs that it incurred in repairing the GSA vehicle.

As mentioned above, it is GSA's burden to establish not only the existence of liability but also the proper amount of the resulting debt. 41 CFR 105-57.005(f)(1). GSA has met a portion of its burden. In support of the damages claimed, GSA presents a "Preliminary Estimate" dated February 21, 2017, from an automobile body shop in Aurora, Colorado, identifying the anticipated cost to repair the rear body and floor, trunk lid, rear lamps, and rear bumper of the GSA vehicle and to provide miscellaneous operations (such as sanding, buffing, and sealing) as $3313.05. A "Preliminary Supplement" to the original estimate dated March 14, 2017, which increased the estimated repair cost to $5379.65, included several pages of photographs showing damage to different parts of the GSA vehicle. GSA also presents a "Final Bill" from the body shop dated March 22, 2017, detailing work to the exhaust system, windshield, back glass, quarter panel, rear body and floor, trunk lid, rear lamps, and rear bumper, along with miscellaneous operations, that identifies an actual repair cost of $6291. Although the petitioner suggests that more should be produced, this documentation adequately supports a claimed debt for the repair of the GSA vehicle in the amount of $6291.

What the record does not support is GSA's claim for monies above that $6291 figure (except for the addition of $10.48 in interest and a penalty of $31.46 that GSA identified in a June 2017 payment invoice). GSA notified the petitioner in its most recent debt notice that she owed GSA $7254.61, not $6291. Presumably, this amount includes additional interest and penalty assessments, but there is no breakdown in the record of the costs being claimed. In fact, during a conference with the Board, counsel for GSA indicated that the increased costs might reflect an increase in the actual repair costs beyond what the final invoice identifies. Any attempt by the Board to identify the basis for the increased dollar claim and how it was calculated would involve pure speculation.

Further, although the petitioner states that some money, perhaps as much as $2500, has already been deducted from tax returns by the IRS to pay this debt, the record does not indicate exactly how much has been collected, and it does not indicate the extent to which such offsets have been applied against or how they affect the $7254.61 now being sought.

Our predecessor board for deciding administrative wage garnishment challenges made clear that, unless and until there is a full and accurate accounting of the debt for which repayment is being sought, administrative wage garnishment is premature:

> We recognize that by law the Government is required to charge interest and penalties on unpaid claims and can likewise, under certain circumstances, waive such interest and charges. *See* 31 U.S.C. § 3717 (2000). In establishing the amount of a claim for purposes of an [administrative wage garnishment] hearing, however, we expect GSA to account in detail for any charges it adds or elects not to add to the basic amount initially found due. . . . [T]he information provided regarding the total amount claimed is confusing and insufficiently detailed to support any determination on our part in an amount in excess of the original amount stated in GSA's [original] letter.

Tracy W., GSBCA 16520-DBT, slip op. at 6 (Nov. 24, 2004).

Where GSA has not established that it has correctly determined the amount of the petitioner's current debt and has not provided an accounting that details the costs being sought, GSA is not entitled to collect any of the alleged debt from the petitioner's salary. *Kenneth H.*, GSBCA 15790-DBT, slip op. at 7 (Apr. 25, 2002). Here, GSA has not provided that level of detail. No later than October 28, 2022, GSA shall provide the petitioner with a detailed accounting of the amounts that it is now seeking to recover (inclusive of a breakdown of any interest and penalties being sought), as well as an accounting of the amounts that the Government has previously recovered from the petitioner through offset (inclusive of any monies collected by the IRS) and the effect of those offsets on the petitioner's debt. Until the petitioner has a full understanding of the amount of debt being sought and the basis for all parts of the claimed debt, GSA cannot seek wage garnishment.

Financial Hardship

Even if GSA is able to provide the petitioner with a full accounting of the monies that it is seeking, it will still be premature at this time for GSA to attempt to collect this debt because of the financial hardship that collection in the amount that GSA proposes would impose. The petitioner claims that she simply cannot afford to pay the debt and that she is currently "under tremendous hardship and barely making ends meet." Her monthly income (after tax withholdings and a small contribution to her Thrift Savings Plan) is approximately $2334,[1] and she asserts that her normal monthly expenses for rent, car payments, car insurance, food and toiletries, gas, cell phone service, and employer-required Internet service (not accounting for any unexpected medical or other costs) are just over $2000 a month, leaving her with a little over $300 of available disposable income per month. She is in her 60's and does not anticipate future employment prospects that would substantially increase

[1] GSA calculates the monthly income as $2445.68, although it has not included a breakdown of how it calculated that figure.

her income. For its part, GSA believes that the petitioner should be required to pay her debt through an administrative wage garnishment of $366.85 per month, which it calculates as 15% of her monthly income.

The delegation of authority that GSA has provided the Board allows us to consider the petitioner's financial hardship arguments as part of an administrative wage garnishment challenge. Pursuant to GSA's regulations, a debtor receiving notice of a wage garnishment is entitled to request a hearing from the Board not only "concerning the existence and/or amount of the debt" but also of "the terms of the repayment schedule . . . [unless] these terms have been established by written agreement" between the parties. 41 CFR 105-57.004(b)(3). As part of a challenge to a proposed repayment schedule, "the debtor may present evidence that the terms of the repayment schedule are unlawful, would cause a financial hardship to the debtor, or that collection of the debt may not be pursued due to operation of law." *Id.* 105-57.005(f)(2).

"Financial adversity does not invalidate a debt or release a debtor from a legal obligation to repay it." *Denise Smith*, No. 14-VH-0068-AG-030, slip op. at 3 (HUD Office of Hearings & Appeals (OHA) Feb. 2, 2015) (available at https://www.hud.gov/sites/documents/14-VH-0068-AG-030.pdf (last visited September 13, 2022)). Nevertheless, "it is considered credible as a factor in determining the terms of the repayment in garnishment cases." *Calvin Sanders*, No. 12-H-CH-AG109, 2012 WL 12549434 (HUD OHA Nov. 29, 2012). "[A]n appropriate [garnishment] schedule requires balancing the [agency's] legitimate interest in efficiently collecting debts owed it within a reasonable amount of time against the financial hardship that would be visited upon the [debtor] by the repayment schedule ultimately imposed." *Hallie Alexis Kline v. United States Postal Service*, No. AO 17-98 (USPS Judicial Officer Department Mar. 23, 2018) (available at https://about.usps.com/who-we-are/judicial/admin-decisions/2018/ao-17-98-dec.htm (last visited Sept. 13, 2022)). "If a financial hardship is found, GSA [or, following a hearing, the Board] will downwardly adjust . . . the amount garnished to reflect the debtor's financial condition." 41 CFR 105-57.010(c). If the Board finds, based upon the petitioner's financial situation, that "a garnishment amount at *any* percentage of Petitioner's disposable income, would, at this time," cause severe financial hardship, the Board has the authority to require that GSA "forego collection" for a (potentially significant) period of time. *John R. Smith*, No. 06-K-CH-AWG35, 2007 WL 9618610 (HUD OHA Nov. 30, 2007) (emphasis added); *see Lucinda Savage*, No. 09-H-NY-AWG115, 2009 WL 10641446 (HUD OHA Sept. 17, 2009) (Where "an administrative wage garnishment, at any rate against the Petitioner, would leave Petitioner without a sufficient remaining balance to cover other miscellaneous expenses from month to month," the hearing official may find that "a garnishment amount at any percentage of Petitioner's disposable income would constitute a financial hardship sufficient enough to forego collection at this time.").

GSA's regulations define "financial hardship" as "an inability to meet basic living expenses for goods and services necessary for the survival of the debtor and his or her spouse and dependents." 41 CFR 105-57.002(i). It is the petitioner's burden to establish, by a preponderance of the evidence, that the proposed terms of repayment of the alleged debt would create a financial hardship. *Autumn Choate Ewart*, No. 10-H-NY-AWG100, 2011 WL 13078337 (HUD OHA July 29, 2011). Here, the petitioner has provided the Board with copies of recent pay stubs reflecting her income amounts and a list of her monthly expenses. GSA asserts that the petitioner's documentation is insufficient to support a claim of financial hardship because she has not provided invoices or receipts to prove her claimed monthly expenses. Although a petitioner is normally expected to support a financial hardship argument with adequate documentation, "credit may be given for certain essential household expenses, despite insufficient documentation." *Denise Smith*, slip op. at 3; *see Lucinda Savage*, 2009 WL 10641446 (finding the hearing official "authorized to take into account expenses necessary for any household, such as basic expenses for food, clothing, and shelter," despite a lack of documentation). We find the list of monthly expenses that the petitioner has provided to be credible and adequate in the circumstances here.

Comparing the petitioner's documented monthly income and the monthly expenses like rent and groceries that are obviously necessary and are not extravagant, it is clear that the petitioner is living on a very tight budget, one that does not leave room for any unexpected health emergencies or household or automobile repairs. GSA's proposed wage garnishment would eliminate the petitioner's ability to retain any discretionary income to cover unexpected costs – in fact, the proposed garnishment would require her to make cuts in her current monthly expenses – and would leave her vulnerable to defaults in her ability to pay rent or cover other necessary costs if even the slightest emergency arose. In such circumstances, it is clear that GSA's proposed wage garnishment would impose a significant financial hardship on the petitioner. Accordingly, we suspend GSA's ability to collect the debt at issue through wage garnishment until and unless the petitioner's monthly financial income significantly increases.

To the extent that the petitioner is asking us to eradicate or waive her debt (such that it cannot come back to haunt her), we do not have that authority. As discussed above, GSA's delegation allows us to consider the terms of a repayment schedule, a delegation that is broad enough to encompass not only reductions in the dollar amounts to be paid monthly under a repayment schedule but also temporary cessation of all collection repayment activities under that schedule. "When collection action on a debt is suspended or terminated, the debt remains delinquent and further collection action may be pursued at a later date," 31 CFR 903.5(a), "in the event there is a change in the debtor's status or a new collection tool becomes available." *Id.* 903.3(b)(2). "Discharge of indebtedness," however, "is distinct from termination or suspension of collection activity." *Id.* 903.5(a). "When an agency discharges a debt in full or in part, further collection action is prohibited" for all time. *Id.*

Our delegation of authority does not allow us to waive or eliminate liability for a valid debt. *See Hedieh Rezai*, No. 04-A-NY-EE016, 2004 WL 3560950 (HUD BCA May 10, 2004) (finding that debt collection hearing officials are "not authorized to extend, recommend, or accept any payment plan or settlement offer" on behalf of the agency). We can only address the timing, inclusive of delays, of repayment. GSA, however, has the authority under 31 U.S.C. § 3717(h) to waive interest and penalties on a valid debt and under 31 U.S.C. § 3711 to negotiate a settlement with the petitioner that could reduce the amount of the debt that GSA will collect. Such a settlement could resolve this matter and ultimately save GSA the costs associated with attempting to collect what otherwise may ultimately be an uncollectible debt. In light of the petitioner's financial circumstances, we encourage GSA to explore the possibility of a settlement.

Decision

For the foregoing reasons, we find that GSA has established the existence of a valid debt but that it has not adequately detailed the amount of the debt. No later than October 28, 2022, GSA shall provide the petitioner with a detailed accounting of the amount that it is now seeking to recover (inclusive of a breakdown of any interest and penalties being sought), as well as an accounting of the amounts that it has previously recovered from the petitioner through offset (inclusive of any monies collected by the IRS) and the effect of those offsets on the petitioner's debt. Once GSA provides that detailed accounting to the petitioner, GSA may wish to engage in settlement discussions with the petitioner, inclusive of the possibility of compromising some of the debt, to resolve this matter amicably.

GSA's request for an administrative wage garnishment is denied for two reasons: (1) because GSA has not adequately supported the amount of the debt and (2) because of the financial hardship that garnishment would impose upon the petitioner. After GSA provides the petitioner with an adequate accounting of the amount of the debt, and assuming that GSA is unable or unwilling to settle this matter through a compromise with the petitioner, GSA will again be able to initiate a request for administrative wage garnishment if, in the future, the petitioner's financial position significantly improves.

Harold D. Lester, Jr.
HAROLD D. LESTER, JR.
Board Judge