



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

August 17, 2021

CBCA 7134-DBT

In the Matter of DERRIC J.

Derric J., Petitioner.

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

KULLBERG, Board Judge.

Petitioner seeks review of a notice of debt collection by wage garnishment in the amount of \$2088.61. The General Services Administration (GSA) contends that petitioner is responsible for the cost of repairs of damage to a GSA vehicle plus interest. Petitioner denies liability and contends that he received no notice of liability for the accident, which occurred in 2002. For the reasons stated below, the Board does not find that a legally enforceable debt exists in this matter.

Background

On June 12, 2002, petitioner's vehicle was involved in an accident with a GSA vehicle in the vicinity of the Audie Murphy Hospital in San Antonio, Texas. The narrative section of the Texas Peace Officer's (TPO) accident report stated the following:

The site of the accident [was] a road construction area [where] 2 lanes merge together for 1 lane.

[Petitioner] said he was attempting to merge into the single lane but stopped when no one provided an opening. This is when [petitioner] said [the GSA vehicle] hit him. [The driver of the GSA vehicle] was unaware of the contact until [petitioner] stopped him.

The TPO accident report indicated that the left side of petitioner's vehicle and the right side of the GSA vehicle were damaged, but neither vehicle needed to be towed. Additionally, the report included a list of "factor/conditions contribution" related to the accident, but the only checked factor, number 74, was a space for a written comment, which stated "see narrative." An illustration of the accident scene on the TPO accident report showed that the two vehicles were on a one-way road with two lanes. Nothing in the report referenced a traffic law violation by either driver. Information about petitioner on the TPO accident report included his telephone number, address, and insurance company and policy number.

The driver of the GSA vehicle subsequently submitted an accident report on a standard form (SF) 91, which was signed by the driver's supervisor on June 25, 2002. The driver described the circumstances of the accident as follows:

Was on Babcock Rd[.] turning left to get on to 410. Two lane turn driver on outside lane came around and tried to also get on 410 from wrong lane and came into my lane hitting gov[ernment] veh[icle.] Driver of other veh[icle] said he thought he had time to get into lane of 410 but misjudge [sic].

The SF 91 only mentioned the name of the officer who filled out the TPO accident report, without any details as to the content of that report, and the spaces on the form for indicating "person charged with accident" and "violations" were blank.

On June 13, 2002, GSA obtained an estimate from a body shop for repairs to the vehicle, and on July 3, 2002, that same shop repaired the vehicle. The repairs to the GSA vehicle totaled \$570.30 for damage to the right front fender, right front door, and trim.

On July 15, 2002, GSA sent petitioner a letter that stated, "After reviewing the facts, we have determined that you are liable for the damages to the government vehicle totaling \$570.30." The letter provided no further explanation as to the reasons for GSA's finding of petitioner's liability, and the letter also indicated that petitioner's insurer was unknown. Petitioner did not receive the letter, and the Postal Service returned the letter to GSA on or about September 23, 2002. However, on September 16, 2002, GSA sent petitioner a final notice to the same address as the previous letter.

On March 1, 2021, the Department of the Treasury issued a notice of garnishment to petitioner in the amount of \$2088.61. Petitioner's response, which was dated March 31, 2021, denied that he owed any debt, and he represented that GSA had not contacted him regarding the debt.

After the docketing of this matter, the Board directed GSA to submit an agency report. GSA contended in its report that "[p]etitioner's failure to yield and properly merge

into traffic – are confirmed by the SF-91 and the [TPO] accident report.” The agency report also argued that petitioner failed to yield to the GSA vehicle as required under section 545.061 of the Texas Transportation Code.

In response to the agency report, petitioner stated that he had not received any notice about the accident from either GSA or the state of Texas. He also represented that he had insurance, but GSA did not request his insurance information.

Discussion

The issue before the Board is whether GSA can collect from petitioner by wage garnishment the cost of repairing its vehicle where the basis for the asserted debt is GSA’s allegation of tort liability in an automobile accident involving a GSA vehicle. Statute provides the following:

Notwithstanding any provision of State law, the head of an executive, judicial, or legislative agency that administers a program that gives rise to a delinquent nontax debt owed to the United States by an individual may in accordance with this section garnish the disposable pay of the individual to collect the amount owed, if the individual is not currently making required repayment in accordance with any agreement between the agency head and the individual.

31 U.S.C. § 3720D(a) (2018). Additionally, statute defines a debt subject to wage garnishment as follows:

[T]he term “claim” or “debt” means 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. A claim includes, without limitation–

(A) funds owed on account of loans made, insured, or guaranteed by the Government, including any deficiency or any difference between the price obtained by the Government in the sale of a property and the amount owed to the Government on a mortgage on the property,

(B) expenditures of nonappropriated funds, including actual and administrative costs related to shoplifting, theft detection, and theft prevention,

(C) over-payments, including payments disallowed by audits performed by the Inspector General of the agency administering the program,

- (D) any amount the United States is authorized by statute to collect for the benefit of any person,
- (E) the unpaid share of any non-Federal partner in a program involving a Federal payment and a matching, or cost-sharing, payment by the non-Federal partner,
- (F) any fines or penalties assessed by an agency; and
- (G) other amounts of money or property owed to the Government.

Id. § 3701(b)(1).

GSA’s administrative wage garnishment regulation applies “to any GSA program that gives rise to a delinquent non-tax debt owed to the United States and that pursues recovery of such debt.” 41 CFR 105-57.001(c)(1) (2020). “[T]he terms ‘claim’ and ‘debt’ are synonymous and interchangeable.” *Id.* 105-57.002(k). A debt or claim is defined as follows:

[A]n amount of money, funds, or property that has been determined by GSA to be due the United States from any person, organization, or entity, except another Federal agency, from sources which include loans insured or guaranteed by the United States and all other amounts due the United States from fees, leases, rents, royalties, services, sales of real or personal property, overpayments, penalties, damages, interest, fines and forfeitures and all other similar sources including debt administered by a third party as an agent for the Federal Government.

Id. GSA has the burden of proving the existence and amount of a debt. *Id.* 105-57.005(f)(1).

Statute provides for the operation of motor vehicle pools and transportation systems under the authority of the Administrator of General Services. 40 U.S.C. §§ 601–611. GSA regulations provide that “[e]very accident involving a GSA Interagency Fleet Management System (IFMS) vehicle shall be investigated and a report furnished to the manager of the GSA IFMS fleet management center which issued the vehicle.” 41 CFR 101-39.403(a). In the case of a claim by the Government, those regulations provide the following:

Whenever there is any indication that a party other than the operator of the GSA [IFMS] vehicle is at fault and that party can be reasonably identified, the agency responsible for investigating the accident shall submit all original documents and data pertaining to the accident and its investigation to the servicing GSA IFMS fleet management center. The GSA IFMS regional fleet

manager, or his/her representative, will initiate the necessary action to effect recovery of the Government's claim.

Id. 101-39.404.

The Board finds that GSA has failed to meet its burden of proof that a legally enforceable debt exists based upon petitioner's tort liability for an automobile accident. The General Services Board of Contract Appeals (GSBCA), which was one of the boards that were consolidated to establish this Board, recognized that a Government claim for a debt based upon tort liability must show "(i) that a tort has occurred and (ii) that the alleged debtor is in fact liable for any resulting damages." GSBCA 16520-DBT, slip op. at 5 (Nov. 24, 2004). The GSBCA also recognized that state law would determine liability absent a finding that federal law should control, but the Government must show an analysis of petitioner's conduct and liability in light of that state law. GSBCA 16526-DBT, slip op. at 7 (Nov. 24, 2004).

GSA contends that petitioner violated section 545.061 of the Texas Transportation Code by failing to yield to the GSA vehicle, but the documentary record in this matter does not support that contention. The TPO accident report did not state that petitioner violated that provision of Texas law or any other traffic law, and the report also stated that petitioner contended that the GSA vehicle struck his car. The SF 91 alleges that petitioner struck the GSA vehicle and suggests that petitioner caused the accident.

GSA offers no explanation for the fact that the TPO accident report and SF 91 give different accounts of the accident, with each driver alleging that the other struck his vehicle. The Board is confronted with inconsistent accounts of an accident that occurred roughly nineteen years ago. Additionally, the Board finds that the record lacks any evidence that would resolve such a discrepancy. Consequently, the weight of evidence is insufficient to support a finding of tort liability.

Decision

The Board does not find that a legally enforceable debt exists in this matter. The suspension of collection of the debt in this matter is permanent, and any amounts collected shall be promptly refunded to petitioner.

H. Chuck Kullberg
H. CHUCK KULLBERG
Board Judge