

Decision

Matter of: Office of Congressional Workplace Rights—Transfer Authority

File: B-332003

Date: October 5, 2021

DIGEST

The Congressional Accountability Act (CAA) applied various employment-related laws to agencies across the legislative branch and established a single dedicated appropriation to pay awards and settlements arising from these laws. The CAA also created the Office of Congressional Workplace Rights (OCWR) and vested it with a central role in administering the CAA. The CAA vests OCWR with statutory authority to transfer amounts from this single appropriation to the appropriations of other agencies as necessary to carry out the provisions of the CAA, thereby overcoming the general prohibition on transfers in 31 U.S.C. § 1532.

DECISION

The Office of Congressional Workplace Rights (OCWR) requested an advance decision under 31 U.S.C. § 3529 concerning its administration of a single dedicated appropriation for paying awards and settlements arising from various statutory provisions related to fair employment and occupational safety and health within the legislative branch. Letter from General Counsel, OCWR, to General Counsel, GAO (Mar. 16, 2020) (Request Letter). Through its work, OCWR may determine that an employee (the prevailing employee) of a legislative branch agency (the employing agency) is entitled to back pay. As explained below, we conclude that OCWR may transfer amounts from the single dedicated appropriation to the appropriations of employing agencies for ultimate payment of back pay awards and settlements.¹

¹ OCWR also asked us whether it or the employing agency is responsible for issuing a form W-2 to the employee and the Internal Revenue Service (IRS). Because this question involves the administration of the tax laws, we will not address it further. OCWR should consider discussing this matter with IRS. OCWR further inquired whether amounts in the dedicated appropriation are available for the payment of payroll taxes and fringe benefits associated with a back pay award or settlement. We continue to consider that issue.

Our practice when rendering decisions is to obtain the legal views of the relevant agencies and establish a factual record on the subject of the request. GAO, *Procedures and Practices for Legal Decisions and Opinions*, GAO-06-1064SP (Washington, D.C.: Sept. 2006), available at www.gao.gov/products/GAO-06-1064SP. OCWR provided information and its legal views in its request letter and through follow-up correspondence. Request Letter; Email from General Counsel, OCWR, to Senior Attorney, GAO (Aug. 10, 2020). OCWR's request to us for a decision arose in part due to orders that OCWR issued in matters involving USCP. Request Letter, at 4. Accordingly, at our request, USCP also provided us with information and its legal views. Letter from Assistant General Counsel for Appropriations Law, GAO, to General Counsel, USCP (Aug. 11, 2020); Letter from Employment Counsel, USCP, to Assistant General Counsel for Appropriations Law, GAO (Aug. 25, 2020) (Response Letter).

BACKGROUND

The Congressional Accountability Act (CAA) established OCWR to administer and enforce various provisions related to fair employment and occupational safety and health within the legislative branch.² Specifically, the CAA provides workplace protections to covered legislative branch employees by incorporating by reference portions of thirteen civil rights, labor, and workplace safety laws. Request Letter, at 2. OCWR provides a means of dispute resolution for legislative branch employees who allege violations under the CAA. Section 415(a) of the CAA created a Treasury account with a dedicated permanent indefinite appropriation (hereinafter referred to as the Section 415(a) appropriation) to make payments pursuant to the act. 2 U.S.C. § 1415(a). OCWR administers the Section 415(a) appropriation.³

In 2019, OCWR promulgated a rule regarding the process for making back pay payments from the Section 415(a) appropriation. OCWR Procedural Rules § 9.04(d) (June 2019); see 165 Cong. Rec. H4896, H4915-16; 165 Cong. Rec. S4105, S4124-25 (daily ed. June 19, 2019). Under this process, OCWR transfers from the Section 415(a) appropriation to the employing agency an amount that corresponds to the withholdings and deductions from the employee's back pay. OCWR makes a

² CAA, Pub. L. No. 104-1, title III, § 301, 109 Stat. 3, 24 (Jan. 23, 1995), as amended by the Congressional Accountability Act of 1995 Reform Act, Pub. L. No. 115-397, title III, § 308, 132 Stat. 5297, 5325 (Dec. 21, 2018). OCWR was formerly named the Office of Compliance.

³ The Section 1415(a) appropriation is a permanent, indefinite appropriation. The CAA provides that, with certain exceptions, "only funds which are appropriated to an account of the Office in the Treasury of the United States for the payment of awards and settlements may be used for the payment of awards and settlements," and that "[t]here are appropriated for such account such sums as may be necessary to pay such awards and settlements." 2 U.S.C. § 1415(a).

disbursement from the Section 415(a) appropriation directly to the employee for the net pay—that is, the gross pay minus the deductions transferred to the employing agency.⁴

OCWR ordered USCP in two cases to make payments of back pay to prevailing employees. Request Letter, at 4. OCWR disbursed the payments of net back pay directly to the prevailing employees and indicated it would transfer funds to USCP so that USCP could remit the withholdings and deductions of the prevailing employees to the appropriate third parties or government agencies. *See id.*; *see also* Response Letter, Attachment A, at 6. USCP believed that it had no authority to accept transferred amounts from OCWR or to make any payments using such transferred amounts. Response Letter, Attachment A, at 5; Request Letter, at 4. Accordingly, USCP did not accept the transfers from OCWR or remit withholdings or deductions to third parties. *Id.* USCP suggested that OCWR request our decision on the issue. *Id.*

DISCUSSION

At issue is whether OCWR may transfer all or part of a back pay payment and associated payments, such as tax withholdings, to the employing agency for ultimate payment. By law, OCWR administers the Section 415(a) appropriation. 2 U.S.C. § 1415(a). As is the case with any appropriation, OCWR may transfer amounts from the Section 415(a) appropriation to another appropriation only where permitted by law. 31 U.S.C. § 1532. Therefore, we must determine whether some provision of law authorizes OCWR to transfer amounts from the Section 415(a) appropriation to the appropriation of the employing agency.

The CAA's Provision of Transfer Authority

In some instances, Congress enacts specific authority for an agency to “transfer” amounts from one appropriation to another. *See, e.g.*, B-330862, Sept. 5, 2019 (statute authorized an official to “transfer” amounts between appropriations); B-290659, Oct. 31, 2002 (statute permitted amounts “to be transferred” to another appropriation). In other instances, Congress enacts transfer authority not by using the specific word “transfer” but, rather, by enacting a statute that otherwise makes clear that amounts may be moved from one appropriation to another.

For example, the Department of Education proposed to perform a cooperative study of mathematics and science education in the United States and Japan. B-217093, Jan. 9, 1985. The Department of Education and the Japan-United States Friendship Commission proposed to pay for the study in part by transferring to the Department

⁴ OCWR's rule also provides other processes to make back pay payments from the Section 415(a) appropriation; for example, OCWR may transfer amounts directly to the payroll administrator or disbursing office, as applicable. OCWR Procedural Rules § 9.04(d).

of Education amounts appropriated to the Friendship Commission. *Id.* We noted that the Friendship Commission was not specifically authorized to transfer amounts to other federal agencies and that the relevant legislative history made no mention of transfers. *Id.* Nevertheless, we also noted that the Friendship Commission’s authorizing statute vested it with broad authority to fund scholarly activities between Japan and the United States as well as to support “cultural and educational activities.” We concluded that the statute authorized the Friendship Commission to transfer amounts to other agencies when the project receiving funding fell within the ambit of the Friendship Commission’s authorizing statute.⁵ *Id.* See also, e.g., 60 Comp. Gen. 686 (1981); B-195775, Sept. 10, 1979; B-182398, Mar. 29, 1976.

In this case, the CAA covers employees who work in many different entities of the legislative branch, with each of these entities receiving one or more of its own appropriations. See 2 U.S.C. § 1301(a)(3) (“covered employee[s]” include those in, among other entities, the Senate, the House of Representatives, the Capitol Police, and the Congressional Budget Office). Though the CAA applies to employees in many different legislative branch entities, Congress established a single entity—OCWR—to resolve claims brought under the CAA. 2 U.S.C. § 1381. Congress also established a single appropriation—the Section 415(a) appropriation—and made only this appropriation available for the payment of all awards and settlements that may arise from any of the legislative branch entities that are subject to the CAA. 2 U.S.C. § 1415.

These three factors—the CAA’s applicability across the legislative branch, whose entities are funded with different appropriations; OCWR’s central role in administering the CAA; and the sole availability of the Section 415(a) appropriation to pay awards and settlements—all indicate that OCWR may transfer amounts from the Section 415(a) appropriation to the appropriations of other legislative branch agencies as OCWR finds such transfers to be necessary to carry out the purposes of the Section 415(a) appropriation. These transfers are a necessary consequence of the statutory framework that the CAA and the various appropriations of the legislative branch establish.

In light of the above, we conclude that the CAA vests OCWR with sufficient statutory authority to overcome the general prohibition on transfers in 31 U.S.C. § 1532. OCWR may therefore transfer all or part of a payment from the Section 415(a) appropriation to the appropriations of employing agencies for ultimate payment of back pay awards and settlements.

⁵ We cautioned that the Friendship Commission likely was not authorized to transfer amounts to other federal entities to carry out studies for which such entities had already received appropriations. B-217093.

USCP's Views

USCP has raised several concerns regarding accepting transferred amounts from OCWR. First, USCP is concerned that it could not accept amounts transferred to it because it believes that the miscellaneous receipts statute, 31 U.S.C. § 3302(b), would require it to deposit the amounts transferred into miscellaneous receipts in the Treasury. Response Letter, Attachment A, at 5. The miscellaneous receipts statute applies where an officer of the government receives money for the government from an outside source. See, e.g., B-321387, Mar. 30, 2011 (agency violated miscellaneous receipts statute where it directed a private developer to deposit cash rent payments in an escrow account); B-318274, Dec. 23, 2010 (agencies violated miscellaneous receipts statute where they sold land and used the proceeds to purchase other land). It does not apply where an agency properly transfers amounts from one appropriation to another. Thus, the miscellaneous receipts statute would not bar USCP from accepting amounts that OCWR may properly transfer for the limited purpose of carrying out the Section 415(a) appropriation.

Similarly, such transfers would not augment USCP's appropriation. An augmentation arises where an agency obtains and retains money from an outside source without statutory authority. B-327376, Feb. 19, 2016. Here, the transfers are authorized by law—specifically, by the CAA. In addition, as 31 U.S.C. § 1532 clearly states, transferred amounts are available “for the same purpose and subject to the same limitations provided by the law appropriating the amount.” Thus, amounts OCWR may transfer to, for example, USCP for the payment of a particular award remain available only for the payment of that particular award, and not to satisfy any other purposes for which USCP's appropriation are otherwise available.

Finally, USCP also believes that there are mechanisms other than transfers that may be available to OCWR, and that OCWR should use these mechanisms. Specifically, USCP states that OCWR could instruct USCP's payroll processor to obligate the Section 415(a) appropriation directly in order to make the necessary payments for withholdings such as payroll and income taxes. Response Letter, Attachment A, at 5-6; see also B-321823, Dec. 6, 2011 (the Department of the Treasury established allocation accounts to make defined amounts that were appropriated to one agency available for obligation by other agencies, as permitted by the applicable statutory framework).

As the entity charged with primary responsibility for administering the CAA and the Section 415(a) appropriation, OCWR is vested with authority to use the appropriate mechanisms available to it by law. These mechanisms include the authority to transfer Section 415(a) amounts to other agencies as discussed above. OCWR may exercise its transfer authority in a manner consistent with law, even if other mechanisms are available to it. Although OCWR may exercise its transfer authority if it so chooses, OCWR's Procedural Rules also provide for the use of other mechanisms that are mutually agreeable to OCWR and the employing agency. OCWR Procedural Rules § 9.04(d)(3). This permits OCWR and the employing

agency to proceed in a spirit of comity by using any mechanism that satisfies applicable legal requirements while promoting the efficient operations of both agencies as well as those of other agencies with a stake in the process, such as the Department of the Treasury and payroll processors.

CONCLUSION

The CAA vests OCWR with authority to transfer amounts from the Section 415(a) appropriation to the appropriations of employing agencies for ultimate payment of back pay awards and settlements and associated payments, such as for tax withholdings.

A handwritten signature in cursive script that reads "Edda Emmanuelle Perez".

Edda Emmanuelli Perez
General Counsel