

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

October 3, 2001

GSBCA 15456-RELO

In the Matter of BARBARA M. SINGLETON

Barbara M. Singleton, Raleigh, NC, Claimant.

Felix Souffrain, Chief, Employee Services and Accounts Payable Division, Office of the Chief Financial Officer, Office of Personnel Management, Washington, DC, appearing for Office of Personnel Management.

NEILL, Board Judge.

Claimant, Ms. Barbara M. Singleton, is a former employee of the Office of Personnel Management (OPM). In May 2000, she underwent a permanent change of station move to Raleigh, North Carolina. She complains that OPM has failed to provide specific information on various withholdings it has made in paying vouchers for reimbursement of her relocation expenses. She also contends that one of these vouchers has never been paid. Finally, she asks that we review her agency's refusal to pay a voucher which she alleges is a claim for reimbursement of her attorney's fee incurred in connection with the purchase of a residence at her new permanent duty station (PDS) in Raleigh.

As a result of her appeal, the agency has finally provided the specific information Ms. Singleton has been seeking regarding the processing of her vouchers. Based upon this information, she has now been able to determine that the voucher she believed was unpaid was in fact paid but at a much later date. As to her claim for her attorney's fee, for the reasons stated below, we conclude that this claim should be paid by the agency.

Background

Ms. Singleton has submitted a total of seven vouchers relating to her relocation to Raleigh. Payment of some of the vouchers was made by check. Later vouchers were paid by direct electronic fund transfer (EFT) to Ms. Singleton's account. The claimant states that she found the payments confusing for several reasons. First, they were never for the amounts actually claimed. In addition, when payment was made by EFT, no formal notice of payment was received. Finally, in some cases, the processing of a voucher took an

extraordinary amount of time. Ms. Singleton contends that her inquiries as well as those of her supervisor regarding the amounts paid and the status of pending vouchers consistently fell on deaf ears.

Specifically, Ms. Singleton's claim falls into three parts. Her first request is for an explanation of the various withholdings which were made on vouchers which have been paid. From e-mail correspondence she has submitted, it is clear that, despite repeated requests for an explanation of amounts withheld, she received little information other than that her relocation benefits were taxable. The second portion of Ms. Singleton's claim concerns a specific voucher for temporary quarters subsistence expenses (TQSE) dated June 19, 2000, which requested payment of \$1480. Based upon information available to her at the time she sought the Board's assistance, she believed that this particular voucher was never paid. The third element in Ms. Singleton's claim concerns a voucher dated August 8, 2000, seeking payment of \$425. She contends that this is a claim for reimbursement of her attorney's fee which she was required to pay in conjunction with the purchase of her residence in Raleigh. This claim was rejected by the agency because the amount was listed on the settlement sheet as a "closing fee."

Discussion

We turn first to Ms. Singleton's request for information on the processing of her vouchers and, in particular, on the agency's various withholdings from payments made to her. In its report to the Board, the agency has now provided details regarding each of Ms. Singleton's vouchers which it has paid. Spreadsheets show the withholding tax allowance calculated for the relocation benefits, the federal income tax withholding, the FICA (Federal Insurance Contribution Act) or "Social Security tax" withholding, and the Medicare employment tax withholding.

In gathering this information on the payment of Ms. Singleton's vouchers, the agency has discovered that it has, in fact, overpaid Ms. Singleton on some of her vouchers. The evidence shows that while the agency calculated the Medicare tax withholding for each of the vouchers submitted, it failed to withhold the amounts from the actual payments ultimately made to Ms. Singleton. The resulting overpayment amounts to a total of \$188.74. In addition, in response to an inquiry from the Board, the agency has now determined that, in paying Ms. Singleton's voucher of May 15, which sought reimbursement of TQSE, it made payments in excess of the daily allowable rate of \$30 for meals and incidental expenses (M&IE). The agency calculates that this resulted in an overpayment of \$136.96.

A similar overpayment was apparently averted with regard to another TQSE voucher which was dated June 2. The agency official processing that voucher noticed before payment that Ms. Singleton's claim for M&IE exceeded the allowable maximum. The official states that he contacted Ms. Singleton by telephone and received her agreement to adjust the voucher to the maximum allowable limit for M&IE. Ms. Singleton has no recollection of the alleged conversation. Nevertheless, the claim, as amended, was processed and paid, and the agency has provided the Board with a copy of the adjusted voucher.

Information provided by the agency also served to confirm that the voucher dated June 19, which Ms. Singleton believed to be unpaid, was in fact paid by the agency. She mistakenly assumed that a payment she received by EFT on July 20 was for her voucher of June 2 rather than for her voucher of June 19. Payment of the former, perhaps as a result of the need to adjust it before processing, was not made until August 24. In subsequent correspondence with the Board, the claimant has explained that, given the long delay in processing and the lack of any explanation regarding withholdings, she never thought to connect this late payment of August 24 with her voucher of June 2. Hence, she assumed that the payment received on July 20 was for the voucher of June 2 and that the payment of the voucher for June 19 was never made.

It is indeed regrettable that the agency did not provide Ms. Singleton with information regarding the processing of her vouchers at the time the vouchers were paid. Nevertheless, information belatedly provided by the agency in this proceeding has now cleared up much of the concern which prompted her to appeal to the Board for assistance.

There remains the question of Ms. Singleton's claim for her attorney's fee. In the absence of any explanation from Ms. Singleton, the agency's initial rejection of a claim for \$425 as "closing fee" certainly was reasonable. On learning that this item had been rejected by the agency, Ms. Singleton called her attorney to determine precisely what the charge involved. She was told that this represented the attorney's fee for professional services rendered. Ms. Singleton tells us that this information was passed on to an agency official who suggested that she provide a written statement from the lawyer confirming this fact. She, therefore, resubmitted this claim for \$425 in a separate voucher with a letter from counsel attached. The letter states very simply that Ms. Singleton was indebted to her attorney in the amount of \$425 for professional services rendered in conjunction with the purchase of her residence and that this debt was paid in full on June 28, 2000, the date of closing on the residence. The agency advises us in its report that, based upon this letter and the advice of agency counsel, it concluded that the \$425 charge was a "settlement or closing fee" and, therefore, not an attorney's fee. No explanation has been offered for how or why the agency or its counsel arrived at this conclusion.

Ms. Singleton has since provided the Board with yet another letter from her attorney. This letter again confirms that the charge of \$425 was for legal work done in conjunction with the purchase of her home. The attorney writing the letter also sheds some light on why his fee was listed as a "closing fee." He explains that, in real estate matters, North Carolina is an "attorney state." This means that real estate transactions are handled by attorneys and not title companies. For this reason, it is customary in that jurisdiction to list the attorney's fee on the settlement statement as a "settlement or closing fee."

Under the Federal Travel Regulation, a Government employee transferred in the Government's interest may be reimbursed for an attorney's fee incurred in conjunction with the purchase of a residence in the area of the new PDS. 41 CFR 302-6.2(c) (2000). As claimant for the payment of this fee, Ms. Singleton has the burden of showing us why she should prevail. Board Rule 401(c) (48 CFR 6104.1(c)); Anthony A. Acerra, GSBCA 15997-RELO (July 14, 2001); Thomas W. Burt, GSBCA 14537-RELO, 98-2 BCA ¶ 29,751; Michael S. Knezevich, GSBCA 14398-TRAV, 98-1 BCA ¶ 29,607; Paul B.

Garvey, GSBCA 13658-RELO, 97-1 BCA ¶ 28,690 (1996). We consider that she has met this burden. The letters she has obtained from counsel credibly establish that the charges in question were legal expenses. While the agency may continue to disagree, it has provided us with no argument or evidence to rebut Ms. Singleton's contention.

Ms. Singleton, therefore, is entitled to payment of the \$425. As already noted, however, the agency has provided convincing evidence that the claimant has already been overpaid a total of \$325.70. Consequently, the reimbursement actually paid to her by the agency for her attorney's fee should be reduced to \$99.30.

EDWIN B. NEILL
Board Judge