Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

August 24, 2001

GSBCA 15486-RELO

In the Matter of ROBERT Q. ALLEN

Robert Q. Allen, Jena, LA, Claimant.

Stephen F. Coakley, Deputy Chief of Staff for Resource Management, United States Army Corps of Engineers, Washington, DC, appearing for Department of the Army.

NEILL, Board Judge.

Claimant, Mr. Robert Q. Allen, is a civilian employee of the United States Army Corps of Engineers (the Corps). He has asked us to review a determination by his agency that he is not entitled to the refund of a repayment he was required to make of a relocation income tax (RIT) allowance he received in conjunction with a permanent change of station (PCS) move he and his family made in August 1999. For the reasons stated below, we affirm the agency's determination.

Background

In August 1999, Mr. Allen was officially notified that he was to be transferred to Jonesville, Louisiana. To ensure that his son would start school on schedule at the new permanent duty station area, Mr. Allen undertook a self-move rather than wait several weeks for the agency to arrange for the transport of his household goods. He contends that this decision on his part saved the Government a considerable amount of money.

Upon completion of his move and the purchase of a new residence, Mr. Allen submitted a voucher for relocation expenses. He was awarded a total of $2219 in relocation costs. In addition, he was given a withholding tax allowance (WTA) of $1135.16. Mr. Allen assures us that he did not "claim, request or otherwise solicit any Withholding/Relocation Allowances." He also notes that the allowance of $1135.16 was never paid to him but rather was deducted "as federal income tax" from the benefit payment ultimately made to him.

In the spring of the following year, the agency advised Mr. Allen that he should submit a claim for his RIT allowance. To his surprise, he was subsequently advised by the agency that it had overestimated his RIT allowance. He was asked, therefore, to refund $476.95 of the WTA of $1135.16 originally credited to him. He paid the agency's demand

for $476.95 but thereafter made a claim for a return of this refund. It was and remains his position that he has already been denied reimbursement of $392.15 in-out-of-pocket expenses encountered during his move and that the agency's demand that he repay $476.95 of his WTA only increases his net loss from the move to a total of $869.10.

The Corps denied Mr. Allen's claim for a refund of his repayment. It assured him that he has received the entire PCS benefit to which he was entitled and that his claim was without merit. An agency official also explained to Mr. Allen that a transferred employee is only entitled to payment of actual expenses which are allowable under regulation and not to payment of money the employee has saved the Government by voluntarily undertaking a self-move.

Discussion

Claimant is critical of the withholding allowance provided to him by his agency, which, in his own words, he did not "claim, request or otherwise solicit." In this regard, however, the agency had little choice. Agencies are directed by statute to reimburse employees for "substantially all" of the income taxes they incur for reimbursed moving expenses. 5 U.S.C. § 5724b(a) (1994 & Supp. V 1999). The Administrator of General Services has issued regulations implementing this statute. They are found in the Federal Travel Regulation (FTR). 41 CFR pt. 302-11 (1999) (FTR pt. 302-11). These regulations apply to all Government employees. For civilian employees of the Department of Defense, such as Mr. Allen, these regulations are further explained and supplemented in the department's Joint Travel Regulations (JTR). JTR ch. 16 (June 1999).

Both the FTR and the JTR implement this statutory directive by establishing a two-step procedure for agencies to use in reimbursing employees for income taxes that result from the reimbursement of various relocation expenses. The first step is to calculate and pay a WTA. FTR 302-11.7; JTR C16007. The second step is to calculate a RIT allowance. FTR 302-11.8; JTR C16008.

When an agency reimburses an employee for nondeductible moving expenses, it withholds federal taxes from the amount paid because the reimbursed amount is considered to be compensation for the employee. One purpose of the WTA, therefore, is to offset the amount of federal income taxes withheld from the reimbursed amount. Another purpose of the WTA is to offset the amount of federal income taxes due on and withheld from payment of the WTA itself, since it too is considered compensation for the employee. Agencies use a formula set out in the regulations to calculate the WTA in the year that the employee is reimbursed for moving expenses. Both the FTR and the JTR refer to this as "Year 1."

The purpose of the RIT allowance is to reimburse the employee for any added tax liability that was not reimbursed by payment of the WTA. The RIT allowance is normally calculated in the year following the year in which the employee received his or her relocation benefits ("Year 2"). While the WTA is calculated at a flat rate (28%), regardless of the employee's tax bracket, the RIT allowance is based, in part, on the employee's actual tax

situation.[1] If the agency calculates a RIT allowance using the prescribed formula and the result is a positive dollar amount, the agency will pay that additional amount to the employee. If, on the other hand, the agency calculates a RIT allowance and the result is a negative dollar amount, this means that the agency has already paid an excessive amount of WTA, and that the employee must refund that excess WTA to the agency. In Mr. Allen's case, the latter situation has occurred. He was granted an excessive amount of WTA.

The agency has explained to the claimant why the overpayment of WTA occurred. As required by the regulation, Mr. Allen's WTA was calculated based on a tax rate of 28%. It was later determined, however, based upon information he provided on his RIT allowance form which was submitted after the tax year, that the relocation benefits he received in 1999 should be taxed at a lower rate of 15%. As a result of this change in tax rates, the RIT allowance calculated for Mr. Allen was $658.21 rather than $1135.16. Accordingly, the agency requested that Mr. Allen refund the difference. In explaining why a refund was required, the agency also pointed out to Mr. Allen that, although he did not personally receive a payment of the $1135.16 which was withheld, this amount was nonetheless deposited with the Internal Revenue Service on his behalf and was used by him to defray his federal income tax liability. To the extent that this tax credit was in excess of that authorized under regulations for the relocation benefits he received, he was expected to repay the agency for his use of that excess credit to cover tax liability for income other than his relocation benefits.

The situation in which Mr. Allen finds himself is not unique. It is not altogether that unusual for an agency to determine in "Year 2" that the WTA provided to a transferred employee during "Year 1" was in excess of the allowable amount. In some of the cases referred to us for resolution, the reason for the excess has been exactly the same as in Mr. Allen's case, namely, the tax rate used to determine the RIT allowance was lower than the 28% rate used to calculate the WTA. In these cases, we have consistently upheld the agency's right to a refund of any excess allowance, provided the agency's application of the formulas used to calculate the WTA and the RIT allowance was not in error. E.g., Peggy A. Byers, GSBCA 15307-RELO, 01-1 BCA ¶ 31,336; Jeffrey P. Nielsen, GSBCA 15069-RELO, 00-1 BCA ¶ 30,746; Patricia Russell, GSBCA 14758-RELO, 99-1 BCA ¶ 30,291.

In presenting his claim, Mr. Allen does not allege that the agency has failed to follow the regulations in calculating his WTA and RIT allowance. Rather, he believes that he should receive more than the applicable regulations permit because he has not been reimbursed for all of his out-of-pocket moving expenses and because he saved the Government the cost of a commercial move by undertaking a self-move. Unfortunately, neither argument can justify return of the $476.95. While Mr. Allen has not identified for us the out of pocket expenses he was denied, presumably they were denied by the agency

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[1]For a more detailed description and discussion of the statutory and regulatory framework applicable to the computation and payment of allowances to relocated employees to offset increased taxes incurred as a result of the reimbursement of certain moving expenses see: W. Don Wynegar, GSBCA 15602-RELO (Aug. 2, 2001); Linda R. Drees, GSBCA 14436-RELO, 99-1 BCA ¶ 30,198; William A. Lewis, GSBCA 14367-RELO, 98-1 BCA ¶ 29,532; Robert J. Dusek, GSBCA 14325-RELO, 98-1 BCA ¶ 29,440 (1997).

because reimbursement for them is not permitted under applicable regulations. Clearly, the agency is precluded from paying such expenses -- as it is likewise precluded from paying a RIT allowance in excess of that permitted by regulation. Herman S. Ransom, GSBCA 15151-RELO, 00-1 BCA ¶ 30,743 (1999).

The agency's denial of Mr. Allen's claim is affirmed. His claim is denied.

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EDWIN B. NEILL
Board Judge