

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

March 15, 2006

GSBCA 16781-RELO

In the Matter of ROBERT D. BARACKER

Robert D. Baracker, Sandia Park, NM, Claimant.

Donald S. Harris, Office of the Solicitor, Department of the Interior, Washington, DC,
appearing for Department of the Interior.

PARKER, Board Judge.

Background

When Robert D. Baracker was transferred in 2004 from Albuquerque, New Mexico, to Washington, D.C., he received a withholding tax allowance (WTA).¹ In March 2005, Mr. Baracker filed what purported to be a relocation income tax allowance (RITA) claim. The claim was filed on the wrong form, sent to the wrong office, and signed in pencil.

The Department of the Interior told Mr. Baracker on more than one occasion that it would not process his voucher unless he signed it in ink. Mr. Baracker responded by sending a letter dated July 19, 2005, that stated in part: "By this letter I resubmit the RITA voucher claim with the expectation that it will be immediately processed for payment." According to the agency, no voucher was included with the letter.

¹Mr. Baracker has since retired and moved back to New Mexico.

On October 15, 2005, Mr. Baracker received a bill from the agency asking him to repay the agency for the amount of the WTA that he had received. The agency has stated that it would process Mr. Baracker's RITA claim if he would submit a copy signed in ink. Rather than do so, Mr. Baracker has chosen to litigate the matter before the Board.

Discussion

Statute and regulation require agencies to pay various relocation benefits and allowances to employees who are transferred in the interest of the Government from one permanent duty station to another. *See* 5 U.S.C. ch. 57, subch. II (2000); 41 CFR ch. 302 (2004). These payments are, for the most part, considered taxable income to the recipients. We have previously discussed in some detail the provisions of law, 5 U.S.C. § 5724b and 41 CFR pt. 302-17, which require agencies to pay these employees additional money to effectively compensate them for the taxes they incur consequent to their receipt of these benefits and allowances. *Robert J. Dusek*, GSBCA 14325-RELO, 98-1 BCA ¶ 29,440 (1997). The regulation establishes a two-step process for accomplishing this goal. In the year in which the agency pays the employee relocation benefits and allowances (year 1), it also pays a withholding tax allowance, which is intended to cover in an appropriate way the increase in the employee's federal income tax withholding liability that results from receipt of the benefits and allowances. 41 CFR 302-17.5(e), (n), -17.7(a). The WTA is calculated at a flat rate based on a marginal tax rate of 28%, regardless of the employee's tax bracket. *Id.* 302-17.7(c). In the following year (year 2), the agency calculates a relocation income tax allowance, which makes further adjustments in payment, to reimburse the employee for any added tax liability that was not reimbursed by payment of the WTA, or to cause the employee to repay any excessive amount of WTA, based on the employee's actual tax situation for the year in which the relocation benefits and allowances were received. *Id.* 302-17.5(f)(2), (m), -17.8; *Paula M. Stead*, GSBCA 16506-RELO, 05-1 BCA ¶ 32,874.

Failure to file a timely RITA claim can result in forfeiture of the WTA payment. *Gail E. Williamson*, GSBCA 15954-RELO, 03-2 BCA ¶ 32,327. The entire WTA is considered to be an excess payment if the RITA claim is not submitted in a timely manner to settle the RITA account. 41 CFR 302-17.7(e)(2).

We agree with the agency that Mr. Baracker has failed to show that he filed a proper RITA claim. The Federal Travel Regulation requires that all hard-copy travel claims be signed in ink. 41 CFR 301-52.3. Although a RITA claim is not a claim for temporary duty travel, it is by regulation required to be filed on a travel voucher form, *id.* 302-17.10, and should, like any important document, be signed in ink, not pencil. It was not unreasonable for the agency to require that Mr. Baracker's RITA claim be re-submitted with a signature in ink.

The agency says it did not receive a re-submitted RITA claim. We do not know whether one was included with Mr. Baracker's letter of July 19, 2005, but we do know this: rather than simply sending a new voucher to an agency which said it would accept such a voucher, Mr. Baracker chose to litigate the matter. We find this to be troubling. The Board's review process does not exist to provide disgruntled employees with a means of harassing their employers. Mr. Baracker's request for Board review of his claim under these circumstances demonstrates that receiving his proper RITA reimbursement was not his primary motivation.

Decision

Mr. Baracker has failed to prove that he filed a valid RITA voucher. Accordingly, the claim is denied.

ROBERT W. PARKER
Board Judge