

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

March 1, 2001

GSBCA 15494-RELO

In the Matter of ALEXANDER J. QATSHA

Elaine W. Wallace, Esq., Oakland, CA, appearing for Claimant.

Judy Hughes, Travel Policy, Defense Finance and Accounting Service - Columbus Center, Columbus, OH, appearing for Department of Defense.

DANIELS, Board Judge (Chairman).

This case comes to us in an unusual posture. It was filed by the Defense Finance and Accounting Service (DFAS), which said that the case was being forwarded "for reconsideration, as requested by the employee's attorney." Once the case arrived here, however, the employee's attorney asked us to dismiss the case. The first question we must answer, consequently, is whether we ought to decide the case at all.

Background

On September 14, 1997, Alexander J. Qatsha was transferred from the Military Sealift Command, Pacific, in Oakland, California, to the Defense Commissary Agency, Sacramento, California. The orders under which Mr. Qatsha made this permanent change of station authorized reimbursement of expenses incurred in selling a residence at the old station and purchasing one at the new station.

In January 1998, Mr. Qatsha submitted a voucher for reimbursement of expenses incurred in the sale of one residence and the purchase of another during the last two months of 1997. On March 18, 1998, he was paid the entire amount requested, \$16,011.70.

By an undated letter apparently written on September 9, 1999 -- nearly eighteen months later -- the Defense Finance and Accounting Service (DFAS) demanded that Mr. Qatsha return to the Government \$13,958.92 of the amount earlier reimbursed. The letter informed the employee, "You . . . have a series of rights concerning this debt." One of those rights was: "You may request a waiver of the repayment of the debt if you acknowledge the validity of the debt, but are of the opinion that you should not be required to repay it." This sentence was based on the agency's reading of 5 U.S.C. § 5584 (Supp. IV 1998), which allows an executive agency to waive a claim of the United States against a person arising out

of an erroneous payment of relocation expenses to an agency employee.¹ Another right about which the letter informed the employee was: "You may request a hearing as to the amount or the validity of the debt and the repayment schedule." As to this sentence, the agency referenced 5 U.S.C. § 5514, which provides that when an agency head or his designee determines that an employee is indebted to the United States, the agency may deduct amounts due from the employee's pay. Prior to making any collections, however, the statute says, the agency must give the employee an opportunity for a hearing before an impartial arbiter on the agency's determination.

By letter dated September 22, 1999, Mr. Qatsha, through his attorney, exercised both of the rights described in DFAS's letter. He requested a waiver of repayment and a hearing as to the validity of the debt.

The agency has never responded to either request. DFAS forwarded the case to this Board by letter dated January 18, 2001.

Discussion

The Board settles claims of or against the United States Government which involve expenses incurred by federal civilian employees for official travel and transportation, and for relocation expenses incident to transfers of official duty station. 31 U.S.C. § 3702(a)(3); Delegation from Acting Administrator of General Services (July 17, 1996). A claim may be filed here only after it has been adjudicated by the agency involved. Rule 401(c) (48 CFR 6104.1(c) (2000)). Filing occurs in one of two ways. A case may be submitted by a claimant. Alternatively, it may be forwarded to us by an agency "at the claimant's request." Rule 402(a)(1), (2).

The Board also considers claims, when requested by an agency disbursing or certifying official, or an agency head, pursuant to 31 U.S.C. § 3529. These requests must involve a claim for payment for travel or relocation expenses which is before the agency and as to which the agency seeks formal advice before making a determination. Rules 501, 502.

Mr. Qatsha did not submit a claim to us, and he did not ask DFAS to forward a claim to us. (To the contrary, his attorney has asked us not to consider his claim.) We therefore have no authority to consider the claim under 31 U.S.C. § 3702(a)(3). DFAS has already made a determination as to Mr. Qatsha's reimbursement for real estate transaction expenses incurred consequent to his permanent change of station. We therefore cannot consider the case as a request for advice prior to the making of such a determination and have no authority to hear the case under 31 U.S.C. § 3529.

¹The statute actually confers this authority on the head of the relevant agency for claims of not more than \$1,500, and on the Director of the Office of Management and Budget for larger claims. The Director delegated his authority to "the Executive Branch agency that made the erroneous payment," and provided, in doing so, that "[w]ithin the Department of Defense, 'agency' means the Department of Defense." Determination by Director of Office of Management and Budget with Respect to Transfer of Functions Pursuant to Public Law 104-316 (Dec. 17, 1996).

Mr. Qatsha's attorney maintains that we have no jurisdiction to hear the case. Her position is that under 5 U.S.C. § 5514, if a hearing is requested by the employee, the hearing official must issue a final decision not later than sixty days after the request is made, and because the agency has failed to provide the required due process, any alleged debt must be deemed to have been waived. We do not consider this argument here, since we have no authority at the moment under 5 U.S.C. § 5514. That statute provides that if a hearing is requested, it will be held by an impartial individual who is either an administrative law judge or is not under the supervision or control of the head of the agency involved. 5 U.S.C. § 5514(a)(2)(D). The Board has accepted requests from agencies that it provide judges to conduct these hearings and issue decisions regarding alleged debts and repayment schedules. It does so under separate agreement with agencies, however, and not in the context of settling a claim under 31 U.S.C. § 3702(a)(3). Patricia Russell, GSBCA 14758-RELO, 99-1 BCA ¶ 30,291.

We convened a telephonic conference with Mr. Qatsha's attorney and the designated DFAS representative to convey the information stated in the preceding paragraph. The attorney stated that this information does not alter Mr. Qatsha's position that he does not want us to consider this case.

Decision

Because Mr. Qatsha neither asked us to hear the case nor asked DFAS to forward the case to us, we dismiss the case.

STEPHEN M. DANIELS
Board Judge