

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

March 28, 2002

GSBCA 15734-RELO

In the Matter of PATRICIA L. REILLY

Patricia L. Reilly, Fayetteville, TN, Claimant.

Pamela A. Regensburger, Chief, Travel Pay Services, Defense Finance and Accounting Service, St. Louis Operating Location, St. Louis, MO, appearing for Department of Defense.

GOODMAN, Board Judge.

Claimant, Patricia L. Reilly, a civilian employee of the Department of Defense, requests that she not be required to pay back to the Government an overpayment of \$1053.49 which occurred when she received an advance on withholding tax allowance from a permanent change of station (PCS) in 1997. The Department of Defense (DoD) has denied the claim, and claimant requests that this Board review the agency's determination.

Background

The record in this case does not contain the details of claimant's PCS move in 1997. Apparently, claimant was issued the usual travel orders which authorized her to receive reimbursement for various expenses incurred in connection with her transfer. When she later claimed these reimbursements, she was not only paid for the costs incurred but, because some of these reimbursements are considered by the Internal Revenue Service (IRS) to represent additional income, she was also given a withholding tax allowance (WTA) and a relocation income tax (RIT) allowance. Pursuant to regulation, these allowances are intended to cover the estimated income taxes due on the relocation benefits a transferred employee receives as a result of a PCS move.

In claimant's case, she was awarded a total of \$2722.22 for WTA and RIT allowance, and when she submitted the claim for reimbursement, the agency determined that she had been overpaid by \$1053.49. The claimant's quarrel with her agency is not in the calculation of the WTA or the RIT allowance but in the fact that in calculating her RIT allowance the agency did not include in "earned income" her husband's unemployment compensation. According to claimant, she would have received a greater amount in RIT allowance had such unemployment compensation been included, and there would not have been an overpayment of the advance.

Discussion

We have previously described in detail 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, e.g., William A. Lewis, GSBCA 14367-RELO, 98-1 BCA ¶ 29,532; Robert J. Dusek, GSBCA 14325-RELO, 98-1 BCA ¶ 29,440 (1997). We see no need to describe that complex process again in this decision.

As we have stated previously in W. Don Wynegar, GSBCA 15602-RELO, ¶ 01-2 BCA ¶ 31,563:

The procedures for calculating the RIT allowance are established in regulations issued by the Administrator of General Services (the head of GSA), in consultation with the Secretary of the Treasury (who supervises the IRS). . . . The procedures "are based on certain assumptions jointly developed by GSA and IRS, and tax tables developed by IRS. . . . They are not to be adjusted to accommodate an employee's unique circumstance which may differ from the assumed circumstances."

01-2 BCA at 155,864.

We discussed in Wynegar the fact that the inflexibility of the procedures for calculation of RIT allowances has resulted in complaints by many affected Federal employees:

A common complaint is that the procedures do not permit the inclusion of unearned income when calculating the basis from which the RIT allowance is derived. As a result, for employees who have taxable income which boosts them into higher tax brackets than the ones they are presumed to be in for purposes of determining their RIT allowance, the allowance does not cover all of the increased tax liability imposed by the receipt of relocation benefits. . . . Because of the way in which "earned income" is defined in the regulation, income which could arguably be deemed "earned" (since it is based on past earnings), such as a spouse's disability pension or social security benefits, is not counted for purposes of calculating the RIT allowance. Thus, an employee whose family has this kind of income is disadvantaged as well. Elizabeth Atkeson, GSBCA 15093-RELO, 00-1 BCA ¶ 30,656 (1999); Linda R. Drees, GSBCA 14436-RELO, 99-1 BCA ¶ 30,198 (1998); Lewis.

As we held in Dusek, "[T]he FTR [Federal Travel Regulation] is very clear that only earned income will be taken into account when determining the proper amount of a RIT allowance, and the FTR's procedures are not to be adjusted in order to accommodate an employee's unique circumstances." 98-1 BCA at 146,171-72.

In the instant case, the unemployment income is the same type of benefit as a social security payment and disability income, i.e., taxable income but not reported on a form W-2.

The applicable regulation at the time of claimant's PCS move in 1997 was FTR 302-11.5(h), which defined earned income and reads in relevant part:

Earned income. For purposes of the RIT allowance, "earned income" shall include only the gross compensation (salary, wages, or other compensation such as reimbursement for moving expenses and the related WTA. . . and any RIT allowance. . . paid for moving expense reimbursement in a prior year) that is reported as income on IRS Form W-2 for the employee (employee and spouse, if filing jointly), and if applicable, the net earnings (or loss) for self-employment income shown on Schedule SE of the IRS Form 1040.

41 CFR 302-11.5(h) (1996).¹

Claimant's spouse's unemployment compensation does not fit into any of the categories included in earned income in the above regulation, and the agency properly excluded the unemployment compensation from earned income for purposes of calculating the RIT allowance.

¹ After 1997, the same definition has been included in the Joint Travel Regulations (JTR). See JTR C16002-A.1.

Decision.

The claim is denied.

ALLAN H. GOODMAN
Board Judge