

Board of Contract Appeals
General Services Administration
Washington, D.C. 20405

September 17, 2002

GSBCA 15825-RELO

In the Matter of STEPHEN BARBER

Stephen Barber, Ruston, LA, Claimant.

J. Patrick O'Toole, Director, Division of Travel Management, Social Security Administration, Baltimore, MD, appearing for Social Security Administration.

PARKER, Board Judge.

Stephen Barber asks the Board to waive repayment of the excess withholding tax allowance paid to him in connection with a 1998 transfer from Hammond, Louisiana, to Ruston, Louisiana. As discussed below, repayment of the excess allowance is required by the Federal Travel Regulation, and the Board lacks authority to waive the repayment.

Background

Mr. Barber was transferred by his employer, the Social Security Administration (SSA), from Hammond to Ruston in 1998. Due to a series of delays, however, Mr. Barber's claim for temporary quarters subsistence expenses (TQSE) was not paid until July and October of 2000. In addition to the TQSE payment, SSA paid a withholding tax allowance (WTA) in the amount of \$1893.29.

SSA has asked Mr. Barber to refund the \$795.50 difference between the WTA estimate of additional taxes resulting from the taxable TQSE payment, and a later, more accurate estimate of additional taxes based upon Mr. Barber's actual tax situation for the year 2000. Mr. Barber does not challenge the agency's calculation of the overpayment but requests that the Board review SSA's decision not to waive repayment of the debt. In support of his request, Mr. Barber points out that if SSA had paid his claim for TQSE promptly in 1998, before he retired, he would have been in a higher tax bracket and thus would have owed the Government nothing.

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 (1998). 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. 302-11, 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, it also pays a withholding tax allowance, which is intended to cover the increase in the employee's Federal income tax withholding liability that results from receipt of the benefits and allowances. 41 CFR 302-11.5(e), (n), -11.7(a). The WTA is calculated at a flat rate based on a marginal tax rate of twenty-eight percent, regardless of the employee's tax bracket. Id. 302-11.7(c). In the following year, the agency calculates a relocation income tax (RIT) 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. 302-11.5(f)(2), (m), -7(e), -9(b).

Mr. Barber received a taxable TQSE reimbursement in calendar year 2000 and a WTA to cover the estimated additional Federal income tax withholding liability for that year. Although the WTA of \$1893.29 was calculated based on a twenty-eight percent Federal tax rate, Mr. Barber's actual Federal tax rate¹ turned out to be fifteen percent. SSA's request for refund of the difference between the WTA for the year 2000 amount, and the more accurate estimate of additional taxes based on Mr. Barber's actual tax situation, is simply application of the second part of the two-step process described above (the RIT allowance).

The situation in which Mr. Barber finds himself is not unique. It is not 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. Barber's case, namely, the tax rate used to determine the RIT allowance was lower than the twenty-eight percent 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. 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.

The change in Mr. Barber's tax bracket between the time he was transferred in 1998 and the time his TQSE claim was paid in 2000 resulted in no additional "out-of-pocket" loss to him. This is because the RIT allowance is calculated to match the tax rate applicable to

¹By "actual Federal tax rate," we mean the Federal tax rate used in 41 CFR part 302-11 to calculate the RIT allowance.

the year in which the additional TQSE income was received. Thus, the net result to Mr. Barber would have been the same if his TQSE claim had been paid in 1998, rather than 2000.

Mr. Barber requests that the Board waive repayment of the amount owed to SSA. Although SSA has authority under law to waive repayment of this debt if it concludes that collection would be "against equity and good conscience and not in the best interests of the United States" and if there is no indication of "fraud, misrepresentation, fault, or lack of good faith" on the part of the person whose debt is requested to be waived, 5 U.S.C. 5584(a)(2)(A), the exercise of this authority is beyond the purview of the Board's review function. Jennings W. Bunn, Jr., GSBCA 15656-TRAV (June 10, 2002).

ROBERT W. PARKER
Board Judge