Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

February 14, 2001

GSBCA 15316-RELO

In the Matter of BRIAN JOHNSON

Brian Johnson, El Paso, TX, Claimant.

Edgardo Aviles, Accounting Services Division, United States Customs Service, Indianapolis, IN, appearing for Department of the Treasury.

NEILL, Board Judge.

Mr. Brian Johnson is an employee of the United States Customs Service. In April 1999, his agency notified him that he must refund part of a withholding tax allowance (WTA) previously given to him in connection with a permanent change of station (PCS) move in 1997. Mr. Johnson steadfastly denies this debt and contends that, if such a debt does exist, it should be waived. In April 2000, Mr. Johnson's agency demanded that he refund the WTA overpayment. Mr. Johnson thereupon referred the matter to this Board for review. He continues to contend that there is no debt to the agency and that any alleged debt should be waived. Because Mr. Johnson has failed to demonstrate any error in the agency's calculation of the amount he owes, we deny his claim for relief. As to his request that the debt be waived, we defer to the agency's decision regarding that matter.

Background

In its initial letter to Mr. Johnson, the agency offered the following explanation of why it had concluded that it was due a refund from him:

> Under Public Law 98-151, the U.S. Customs Service is authorized to reimburse employees for additional federal, state and local income taxes incurred as a result of including certain relocation reimbursements as income. The process to reimburse employees for these taxes involves two steps: (1) a withholding tax allowance (WTA) and (2) a Relocation Income Tax (RIT) allowance.
>
> The WTA is an estimated payment made to the Internal Revenue Service (IRS), on your behalf, by the U.S. Customs Service. The WTA payment is made to the IRS at the time your travel vouchers are processed and

> reimbursement is made to you. Such payment is intended to cover the additional tax liability that you incurred as a result of your relocation.
>
> The employee must file a RIT claim as required by law. The Accounting Services Division (ASD) then computes the gross RIT allowance to determine if this estimate was low or high. If the WTA estimate was less than the gross RIT allowance, the employee is due an additional allowance. If the WTA estimate was greater [than] the gross RIT allowance, the employee is required to remit the amount of the overpayment to the U.S. Customs Service.
>
> In processing your 1998 RIT claim, the ASD computed the gross RIT allowance to be $1,379.47. The WTA payments made during 1998, related to [your] move . . . were $2,909.20. Therefore, the WTA payments exceeded the gross RIT allowance in the amount of $1,529.73 and the overpayment is due upon receipt of this letter.

Enclosed with this letter from the agency was a printout purporting to show how the overpayment was computed.

Notwithstanding this explanation offered by the agency, Mr. Johnson sought additional information on precisely why the agency paid a WTA in excess of the RIT later found to be due. One unidentified employee of the agency's accounting division allegedly told Mr. Johnson that the overpayment was due to a "glitch" in the computer programming.

In a demand letter dated June 6, 1999, the agency erroneously advised Mr. Johnson the it intended to offset the debt against his salary under the salary offset procedure provided by 5 U.S.C. § 5514 and 31 CFR 5.11 pt. 5, subpt. B. This process offers debtors an oral hearing.

Mr. Johnson requested a hearing and, in doing so, stated that he did not pretend to understand the RIT or how it affected him but believed that the agency's accounting services division was equally unable to explain how the alleged debt came about. The request for a hearing was eventually denied.[1]

Upon receipt of the agency's letter on April 10, 2000, Mr. Johnson and his supervisor conferred by telephone with an official of the agency's accounting services division. This individual was apparently knowledgeable regarding the procedure for calculating an employee's WTA and RIT. His explanation, however, proved to be unsatisfactory to claimant. When the possibility of a waiver was mentioned, this official is said to have given Mr. Johnson the address of this Board and recommended that he refer the matter to us for action. On May 5, 2000, Mr. Johnson filed his request for review with this Board.

---

[1]In its report to the Board on this case, the agency says that in its demand latter of June 6, 1999, it incorrectly advised Mr. Johnson of his rights. In a letter, which Mr. Johnson states he received on April 10, 2000, the agency corrected this error and advised Mr. Johnson he would be charged interest on his debt from the date of that letter rather than from the date of the demand letter of the previous year which incorrectly advised him of his rights.

The agency, in response to the Board's docketing order, filed its report with the Board. The report states that the WTA and RIT for Mr. Johnson's PCS were calculated in accordance with Part 302-11 of the Federal Travel Regulation. A summary of these calculations and supporting documentation were furnished with the report. Mr. Johnson was asked by the Board if he cared to comment on the agency report. By letter dated September 26, 2000, he replied that he did not wish to reply to the agency submission.

Discussion

The explanation of the nature and purpose of the WTA and RIT provided to Mr. Johnson by the agency in its first letter to him was a fair summary of what, in fact, is a relatively complicated procedure. His indignation over the inaccuracy of the WTA, therefore, is puzzling. As the agency explained, the WTA is nothing more than an estimate and the purpose of the RIT is to determine whether that estimate was too high or too low. As this Board has previously observed:

> The WTA is calculated at a flat rate, regardless of the employee's tax bracket. [41 CFR] 302-11.5(g). 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. Id. 302-11.5(f)(2), (m), -11.7(e), -11.9(b).

William A. Lewis, GSBCA 14367-RELO, 98-1 BCA ¶ 29,532, at 146,220-21.

In the event of overpayment of WTA, this Board has consistently upheld an agency's right to a refund of the excess WTA when based upon a properly calculated RIT. E.g., Catherine S. Cunningham, GSBCA 15035-RELO, 00-1 BCA ¶ 30,807; Jeffrey P. Nielsen, GSBCA 15069-RELO, 00-1 BCA ¶ 30,746; Elizabeth Atkeson, GSBCA 15093-RELO, 00-1 BCA ¶ 30,656 (1999); Linda R. Drees, GSBCA 14436-RELO, 99-1 BCA ¶ 30,198 (1998); Robert J. Dusek, GSBCA 14325-RELO, 98-1 BCA ¶ 29,440 (1997). Given the nature of the WTA/RIT process, it should come as no great shock to Mr. Johnson that his WTA was found to be erroneous in the amount paid. However, it does not necessarily follow from such an error that there has likewise been an error in the actual calculation of the WTA. See Patricia Russell, GSBCA 14758-RELO, 99-1 BCA ¶ 30,291, at 149,806. Nevertheless, he insists that there has been no overpayment but offers us no explanation of why this is true. The agency, for its part, has provided us with evidence of its own calculations which support the conclusion that an overpayment in the amount of $1529.73 was made. Mr. Johnson has not challenged the agency's submission. Indeed, he has indicated to the Board that he does not wish to reply to the agency's submission.

Federal employees seeking relief from this Board in matters involving relocation or travel bear the burden of showing us why they should prevail. Board Rule 401(c) (48 CFR 6104.1(c) (1999)). Because Mr. Johnson has failed to carry this burden, we deny his claim for relief.

As to Mr. Johnson's request that we waive his debt to the agency, we have previously held that this Board does not have the authority to waive a debt which is owed by an employee to an agency and which arises out of a previously-made payment relating to relocation allowances. The head of the agency may waive repayment of an employee's claim arising out of "erroneous payment" of such an allowance if the head determines the collection of the debt "would be against equity and good conscience and not in the best interests of the United States." 5 U.S.C. § 5584(a); Patricia Russell, 99-1 BCA at 149,806. Mr. Johnson's agency, however, has advised us that it generally does not waive debts related to relocation income tax and that, given the facts of this case, it finds no basis for making an exception for Mr. Johnson. The Board has no power to review the agency's decision not to waive repayment.

_____

EDWIN B. NEILL
Board Judge