

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

November 1, 2001

GSBCA 15666-RELO

In the Matter of PAUL M. DUDEK

Paul M. Dudek, Jacksonville, FL, Claimant.

Robert D. Brown, Deputy Director, Finance Center, United States Army Corps of Engineers, Department of the Army, Millington, TN, appearing for Department of the Army.

DeGRAFF, Board Judge.

Paul M. Dudek is an employee of the Department of Defense (DoD). When DoD transferred Mr. Dudek from one duty station to another for permanent duty, it reimbursed him for some of his moving expenses. DoD then paid Mr. Dudek an allowance to compensate for the increased tax liability he incurred due to his receipt of the moving expense reimbursements. When DoD calculated the amount of Mr. Dudek's allowance for his increased tax liability, it decided not to include in his earned income the amounts he received from his wife's retirement income and from insurance proceeds, because both those amounts were reported to the Internal Revenue Service (IRS) on IRS Forms 1099-R. If DoD had included those amounts in Mr. Dudek's earned income, it would have paid Mr. Dudek a larger allowance. Mr. Dudek asks us to review DoD's decision.

DoD correctly decided to exclude Mr. Dudek's wife's retirement income and the insurance proceeds when it calculated the amount of the allowance it paid to compensate for his increased tax liability. The regulations that govern DoD's calculations explain that when DoD determined the amount of Mr. Dudek's allowance, it could consider only earned income reported on IRS Form W-2 and the net earnings from self-employment shown on Schedule SE of IRS Form 1040. JTR C16002; 41 CFR 302-11.5(h), -11.8(d)-(e) (2000). Perhaps the regulations could have been written differently. We and DoD, however, must apply them as written and in doing so, we see that amounts reported on the IRS Forms 1099-R cannot be included in Mr. Dudek's earned income. Contrary to Mr. Dudek's view, the procedures set out in the regulations are not designed to reimburse an employee for all of the employee's added tax liability. In addition, the procedures cannot be adjusted to accommodate an employee's unique circumstances. We have considered several claims similar to Mr. Dudek's and reached the same conclusion as we reach here. Catherine S. Cunningham, GSBCA 15035-RELO, 00-1 BCA ¶ 30,807 (income reported on line 17 of IRS Form 1040); Linda R. Drees, GSBCA 14436-RELO, 99-1 BCA ¶ 30,198 (income reported on IRS Form 1099-R);

William A. Lewis, GSBCA 14367-RELO, 98-1 BCA ¶ 29,532 (income reported on IRS Form 1099). Because the amounts Mr. Dudek received from his wife's retirement income and from insurance proceeds were reported to the IRS on IRS Forms 1099-R, DoD correctly decided not to include those amounts in Mr. Dudek's earned income when it calculated the allowance it paid to compensate for his increased tax liability. The scope of our authority does not include changing the regulations, as Mr. Dudek requests.

MARTHA H. DeGRAFF
Board Judge