# Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

October 4, 2002

GSBCA 15931-RELO

In the Matter of CURTIS J. LYPEK

Curtis J. Lypek, APO Area Europe, Claimant.

Cynthia R. Blevins, Acting 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.

In 2000, the Department of Defense (DoD) transferred Curtis J. Lypek from one permanent duty station to another. In 2001, DoD transferred him to another new permanent duty station. In connection with these transfers, Mr. Lypek incurred relocation expenses that were reimbursed by DoD in 2001. According to statute, agencies are required to reimburse employees for "substantially all" of the taxes they incur for reimbursed moving expenses. 5 U.S.C. § 5724b (2001). The Federal Travel Regulation (FTR) implements this statutory directive by establishing a procedure that agencies use to calculate a withholding tax allowance (WTA) in one year and a relocation income tax allowance (RITA) in a later year. Practically speaking, the WTA is an estimate of the RITA. In order to determine the amount of these allowances, agencies use formulas set out in the FTR. 41 CFR ch. 302-11 (2001). When DoD used the FTR's procedures to calculate Mr. Lypek's RITA, it determined that his WTA had overestimated the amount of his RITA, and as a result, DoD sent Mr. Lypek a bill for $448.47.

Mr. Lypek does not believe that he owes DoD $448.47. He says that the procedures set out in the FTR for calculating his RITA do not reasonably reimburse him for all of the taxes that resulted from his moving expense reimbursements. He explains that the RITA formula set out in the FTR assumes that he was in the 15% federal income tax bracket,[1] although he was actually in the 15% tax bracket for part of his income and in the 27.5% tax bracket for the remainder of his income. Mr. Lypek suggests that DoD should use a method different from that set out in the FTR for calculating his RITA, and explains that using this alternative method would result in DoD owing him an added $12.68. In response to

[1] The rate applicable to Mr. Lypek is found at 67 Fed. Reg. 4923-25 (Feb. 1, 2002).

Mr. Lypek's submission to us, DoD checked to make sure that his RITA was calculated as required by the FTR and determined that it was calculated properly. DoD says that although Mr. Lypek has offered an alternative method of calculating his RITA, it is bound to follow the method set out in the regulation.

As we recently explained in Stephen Barber, GSBCA 15825-RELO (Sept. 17, 2002), "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." Mr. Lypek does not contend that DoD misapplied the formulas that the FTR required it to use in order to calculate his allowances. Instead, he suggests that DoD should use another formula that would result in a larger RITA. Unfortunately for Mr. Lypek, DoD cannot tailor the FTR's formula to suit his situation. The FTR explains that its procedures are "not to be adjusted to accommodate an employee's unique circumstance" which may differ from the circumstances assumed by GSA and the Internal Revenue Service when they developed the procedures for calculating and paying a RITA. 41 CFR 302-11.8(b)(2). The FTR's procedures are not designed to reimburse precisely the amount of an employee's added tax liability due to moving expense reimbursements. 41 CFR 302-11.8. Neither DoD nor the Board can ignore the plain provisions of the FTR in order to achieve the result that Mr. Lypek desires.

Because the agency followed the FTR's requirements when it calculated the amount of Mr. Lypek's relocation income tax allowance, his claim is denied.

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MARTHA H. DeGRAFF
Board Judge