Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

May 2, 2003

GSBCA 15954-RELO

In the Matter of GAIL E. WILLIAMSON

Gail E. Williamson, Burke, VA, Claimant.

Captain Michael D. Connor, Chief, Financial Services Flight, 12th Comptroller Squadron, Department of the Air Force, Randolph Air Force Base, TX, appearing for Department of the Air Force.

NEILL, Board Judge.

Ms. Gail E. Williamson, a former civilian employee of the United States Air Force, disputes a claim her former agency has made for the refund of a withholding tax allowance (WTA) previously paid to her in connection with a permanent change of station (PCS) move. On review of the facts of this case, we find that the agency has acted in accordance with applicable regulation.

Background

Towards the close of 1995, Ms. Williamson undertook a PCS move in connection with a transfer to Randolph Air Force Base (AFB) in Texas. The Air Force subsequently reimbursed her for some of the expenses of that move. Because such reimbursements are reported to the Internal Revenue Service as income and are subject to federal tax withholding, the agency, pursuant to 5 U.S.C. § 5724b(a) (1994) and section C16007 of the Joint Travel Regulations (JTR), also paid Ms. Williamson a WTA to cover her federal income tax obligation regarding the relocation benefits received.[1]

On March 16, 2002, Ms. Williamson received a final notice of a delinquent debt from DoD. Upon inquiry, she determined that the debt arose out of her PCS move in 1995. It was

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[1] As a civilian employee of the Department of Defense (DoD), Ms. Williamson was subject to the JTR, the Department's own travel regulations which implement and, to a limited degree, supplement the Federal Travel Regulation (FTR). At the time of Ms. Williamson's transfer, the provisions of the FTR which required payment of the WTA were found in 41 CFR 302-11.5 (1995).

the contention of the Air Force that Ms. Williamson had forfeited the WTA received after that move. The forfeiture was said to be the result of her failing to file a relocation income tax allowance (RITA) claim in the year following her receipt of the WTA.

Ms. Williamson states that she clearly recalls filing the RITA form with a young airman working in the Finance Office at Randolph AFB. She notes that she and her husband had filed similar forms from previous moves and were thus aware of the financial benefit of doing so. It is her contention that the Air Force failed to process the form properly. At this point in time, she explains that she is unable to provide a copy of the form she allegedly submitted since she does not retain personal records on matters such as this beyond three or four years. Because the agency failed to advise her in a timely manner of its claim for a refund of the WTA and because so much time has passed since her alleged failure to submit the required RITA form, Ms. Williamson asks that the debt "be absolved." She also asks that money due her from the Government but withheld in partial satisfaction of that debt be restored to her.

In view of the many changes in personnel at the Finance Office at Randolph, the Air Force is unable to say with any degree of confidence that Ms. Williamson's RITA form was or was not submitted as claimed. The agency does take issue, however, with her argument that there was a strong motivation for her to file the form because of the financial benefit in her doing so. The agency representative notes that there is not always a financial benefit in filing this form. The information provided in the RITA form can, on occasion, lead to the determination that the WTA previously paid to the employee was in excess of an employee's net relocation allowance. In that event, the filing of the RITA form results in a Government claim for a refund of money paid rather than in the payment of an additional allowance. The agency also questions the credibility of Ms. Williamson's statement that she destroyed her files if, in fact, she really anticipated receiving a financial benefit.

Discussion

By regulation, a transferred employee, after receiving his or her relocation benefits and a WTA based upon those benefits, is required to submit certified tax information and a final claim for RITA within 120 days after the close of the calendar year in which reimbursements were paid (year one). JTR C16007-E.2.b. The reason for this rests in the fact that the WTA paid in year one is designed to cover only an employee's withholding tax obligation for federal income taxes on relocation benefits. Furthermore, the withholding tax rate for calculating a WTA is normally set at a flat twenty-eight percent. By contrast, the final RITA adjustment which is claimed and calculated in year two, i.e., the year following the year in which the individual received and paid taxes on the relocation benefits, covers state and local income taxes on those benefits as well. In addition, the combined marginal tax rates used to determine the RITA are different from the flat twenty-eight percent tax rate used for the WTA and are based instead on personal certified tax information provided by the employee regarding year one.

Submission of the RITA form and the certified tax information it contains in year two is hardly a mere formality. Until the employee is notified of what the final adjustment will be, the RITA remains very much an open item. As the agency points out, processing of the

form involves reference to the WTA paid in year one and can, on occasion, lead to the conclusion that the employee has already received an allowance in excess of that to which he or she is entitled. In this regard, we have consistently held that agencies are entitled to collect excess WTA payments from employees . Brian Johnson, GSBCA 15316-RELO, 01-1 BCA ¶ 31,337 (citing cases). Indeed, the submission of the RITA form and personal tax information in year two is so important that the JTR warns employees that failure to submit the form will, in effect, result in a forfeiture of the original WTA. Section C16007-E provides:

> The entire WTA is an excess payment if the RIT allowance claim is not submitted in a timely manner to settle the RIT allowance account.

A similar provision appears in FTR 302-11.7(e)(2).

Ms. Williamson faults the Air Force for not having advised her sooner that it had no record of a RITA submission from her. This is regrettable but undoubtedly attributable, at least in part, to her leaving the Air Force's employ and moving away from Randolph. To the agency's credit, however, it did finally succeed in reestablishing contact with her. She, on the other hand, apparently made no effort to reach final closure with the agency on the RITA adjustment, but instead eventually destroyed her own personal records regarding the matter. Given the nature of the RITA adjustment, this was ill-advised. In a situation such as this, we would expect an employee to solicit the agency for a reply regarding the pending claim before destroying any records relating to it.

Decision

In the absence of a RITA claim or proof that one was submitted, we find nothing improper in the agency's insistence that Ms. Williamson return the WTA she previously received. The agency is clearly acting in accordance with applicable regulation. Ms. Williamson's claim that she be permitted to retain the WTA is, therefore, denied.

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EDWIN B. NEILL
Board Judge