

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

August 15, 2003

GSBCA 16034-RELO

In the Matter of KENNETH G. KANIK

Kenneth G. Kanik, APO Area Europe, Claimant.

Maj. William C. Ramsey, Acting Battalion Commander, 208th Finance Battalion, Department of the Army, APO Area Europe, appearing for Department of the Army.

GOODMAN, Board Judge.

Claimant, Kenneth G. Kanik, is a civilian employee of the Department of Defense. He has asked this Board to review a decision of his agency with regard to reimbursement of expenses incurred in a permanent change of station (PCS) move.

In April 2002 claimant accomplished a PCS from New Orleans, Louisiana, to Wuerzberg, Germany. He incurred reimbursable relocation expenses and submitted a travel voucher for reimbursement. He was reimbursed various expenses, and taxes were withheld from that reimbursement. However, he was not paid a withholding tax allowance (WTA). Instead, he was provided guidance as to how to submit a claim for a relocation income tax allowance (RITA).

The Board issued two inquiries to the agency requesting a position as to whether the agency believed the claimant had been reimbursed properly based upon statute and regulation. In both instances the agency's reply was non-responsive. In its initial response to the claimant's request for review and in its first response to the Board's inquiries, the agency offered no explanation as to why the claimant was denied payment of a WTA and instead has stated that "the current process needs to be revised."

Discussion

Agencies are directed by statute to reimburse employees for "substantially all" of the taxes they incur on reimbursed moving expenses. 5 U.S.C. § 5724b(a) (2000). At the time of claimant's PCS, the Federal Travel Regulation, at 41 CFR pt. 302-11 (2000), and the Joint Travel Regulations, at Chapter 16, implemented this statutory directive by establishing a two-step procedure for agencies to use in reimbursing employees for such taxes. The first

step is to calculate and to pay a WTA. The second step is to calculate a RITA. Sometimes, the calculation of the RITA shows that an employee's WTA was too small, in which case the agency must make an additional payment to the employee. Other times, the calculation shows that the agency paid an excessive WTA, in which case the employee must repay the excessive WTA to the agency. 41 CFR pt. 302-11.

Despite repeated inquiries from the Board, the agency has offered no explanation as to why claimant was denied payment of a WTA, which is the first step in the process. Instead, it has suggested that the two step process be revised, and has directed the claimant to apply for the RITA, the second step. The agency has not complied with statute and regulation. It must calculate and pay the WTA before the RITA can be calculated.

Decision

Claimant is entitled to payment of a WTA. The agency should respond to claimant's request for payment pursuant to statute and regulation.

ALLAN H. GOODMAN
Board Judge