

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

November 5, 2004

GSBCA 16452-RELO

In the Matter of EDDIE G. HOKLOTUBBE

Eddie G. Hoklotubbe, Tahlequah, OK, Claimant.

Barbara Eaton, Chief Accounting Operations, National Business Center, Department of the Interior, Denver, CO, appearing for Department of the Interior.

DeGRAFF, Board Judge.

Eddie G. Hoklotubbe asks us to reconsider our decision in Eddie G. Hoklotubbe, GSBCA 16452-RELO (Sept. 8, 2004). After reviewing the additional information presented by Mr. Hoklotubbe, we grant the request for reconsideration and grant the claim.

The agency paid Mr. Hoklotubbe withholding tax allowances for 2000 and 2001, to compensate for the increased tax liability he incurred due to his receipt of moving expense reimbursements. The regulation that applies to Mr. Hoklotubbe establishes specific procedures for calculating the allowances, and "earned income" is one factor the regulation uses in order to make the required calculations. 41 CFR pt. 302-11(2000). The regulation defines "earned income" as including only the gross compensation reported on Internal Revenue Service (IRS) Form W-2 and, if applicable, self-employment income shown on Schedule SE of IRS Form 1040. 41 CFR 302-11.5(h).

When the agency calculated the amount of Mr. Hoklotubbe's two allowances, it did not include in his earned income the amount he received in retirement benefits from his service as an Oklahoma City police officer, because this income was reported on IRS Form 1099. The agency based its calculations of earned income upon the amounts shown in Mr. Hoklotubbe's IRS Forms W-2.

As we explained in our September 8 decision, there is an exception to the rule set out in section 302-11.5(h) of the regulation. Retired pay reported on IRS Form 1099 can be included as part of earned income when calculating withholding tax allowances if the retired pay was required to be reported on IRS Form W-2 in 1985 when the regulation was first promulgated and if the retired pay is taxable pay. Marion D. Taylor, GSBCA 15500-RELO, 01-2 BCA ¶ 31,607; James P. Lenahan, B-256731 (Nov. 8, 1994). After receiving our September 8 decision, Mr. Hoklotubbe provided us and the agency with information to

establish the retired pay he received is taxable and was required to be reported on IRS Form W-2 in 1985.

Reconsideration is warranted because Mr. Hoklotubbe's inadvertence in supplying us with relevant information regarding his retired pay was justifiable. Although the exception to the rule set out in section 302-11.5(h) of the regulation has been in existence for nearly ten years, it has never been incorporated into the regulation. It is understandable, therefore, that a claimant would be unaware of the need to supply information related to the application of the exception.

After reconsideration, the claim is granted. Usually, according to section 302-11.5(h) of the regulation, income reported on IRS Form 1099 is not earned income. Paul K. Dudek, GSBCA 15666-RELO, 02-1 BCA ¶ 31,689 (2001). Mr. Hoklotubbe falls within the exception to this rule because the retired pay he receives is taxable and was required to be reported on IRS Form W-2 in 1985. The agency should include the retirement pay he receives from his service as an Oklahoma City police officer as part of his earned income when it calculates his withholding tax allowances.

MARTHA H. DeGRAFF
Board Judge