UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

March 11, 2016

CBCA 5137-RELO

In the Matter of STEPHEN R. ROTTON

Stephen R. Rotton, Abingdon, MD, Claimant.

Mona Kinder, Branch Chief, Travel Entitlements, National Security Agency, Fort Meade, MD, appearing for Department of Defense.

DANIELS, Board Judge (Chairman).

The Department of Defense transferred Stephen R. Rotton to Maryland in January 2015. The agency paid to Mr. Rotton, in conjunction with this move, two relocation benefits – an allowance for temporary quarters subsistence expenses (TQSE) he incurred and a withholding tax allowance (WTA).

The TQSE allowance is a benefit which is "intended to reimburse an employee reasonably and equitably for subsistence expenses incurred when it is necessary to occupy temporary quarters." 41 CFR 302-6.3 (2014). The Government's objective in paying a WTA is "to reimburse transferred employees for substantially all (not exactly all . . .) of the additional Federal, state, and local income taxes incurred as a result of a relocation, including the taxes on the taxable relocation benefits and the taxes on the reimbursement for taxes." *Id.* 302-17.3 (2015) (79 Fed. Reg. 49,640, 49,646-47 (Aug. 21, 2014) (revising 41 CFR part 302-17, Taxes on Relocation Expenses, with applicability to employees who relocate beginning January 1, 2015).

Mr. Rotton's TQSE allowance did not cover all of the subsistence expenses he incurred while in temporary quarters, and even with payment of a WTA added to his TQSE allowance, his after-tax net benefit from having received the TQSE payment was about $1000 less than the amount of the payment. Mr. Rotton does not believe that his agency

violated any statutory or regulatory requirement in calculating his benefits. He urges us, however, to adopt, for making the calculations, an alternative method which would result in his being made whole after taxes in retaining all of the TQSE reimbursement he received.

We cannot comply with his request. Both TQSE benefits and the WTA are authorized by statute to be made in accordance with regulations prescribed by executive branch officers – the Administrator of General Services as to TQSE and that Administrator after consultation with the Secretary of the Treasury as to the WTA. 5 U.S.C. §§ 5724a(c)(1), 5724b(a), 5738(a)(1), (c) (2012). The regulations are promulgated in 41 CFR parts 302-6 and 302-17. The Civilian Board of Contract Appeals settles "claims involving expenses incurred by Federal civilian employees for official travel and transportation, and for relocation expenses incident to transfers of official duty station." 31 U.S.C. § 3702(a)(3); GSA Order ADM P 5450.39D, at 157 (Nov. 16, 2011). In performing this function, we have no authority to write or rewrite regulations. Our role is to apply the rules – and to the extent that they are unclear, interpret them in a rational way.

The rules regarding TQSE and WTA are clear, as Mr. Rotton acknowledges, in applying to his situation. They leave us no room for interpretation. TQSE under the actual expense method, which Mr. Rotton elected, is to be paid at the "applicable per diem rate." That rate, for all locations within the continental United States (CONUS), is "[t]he standard CONUS rate." 41 CFR 302-6.102. The standard CONUS rate was somewhat less than the rate prescribed by the Administrator of General Services for employees who performed temporary duty during 2015 at Mr. Rotton's location in Maryland. *See id.* 301-11.6 (referencing http://www.gsa.gov/perdiem). Nevertheless, the agency acted in accordance with regulation in applying the standard CONUS rate in calculating Mr. Rotton's TQSE reimbursement. Mr. Rotton's proposal for an alternative method of calculation is impermissible because it would result in his being paid more than the amount of TQSE which is authorized by regulation.

Similarly, the WTA (a first-step component of the relocation income tax allowance), is calculated in a precisely-prescribed way to cover "substantially all" of the income tax consequences resulting from an employee's receipt of relocation benefits like TQSE – not "all" of those consequences. 5 U.S.C. § 5724b(a); 41 CFR subpt. 302-17.B. "Substantial" means less than the whole – "that specified to a large degree or in the main." *William A. Lewis*, GSBCA 14367-RELO, 98-1 BCA ¶ 29,532. Neither the statute nor the regulation promises "that employees will be reimbursed for every dollar of tax liability incurred as the result of having received relocation benefits and allowances." *Jeffrey P. Nielsen*, GSBCA 15069-RELO, 00-1 BCA ¶ 30,746; *see also Michael J. Riegle*, CBCA 5018-RELO, 16-1 BCA ¶ 36,230; *Eddie D. West*, CBCA 790-RELO, 07-2 BCA ¶ 33,662. Nor does the law say anything about making recipients of the WTA whole after payment of employment taxes

such as those mandated by the Federal Insurance Contributions Act. *T. Scott Frick*, GSBCA 15388-RELO, 01-1 BCA ¶ 31,363. Neither Mr. Rotton nor we can find that his agency misapplied any of the rules regarding calculation of the WTA as to his relocation benefits.

Mr. Rotton's predicament is but one instance of the time-honored truth that no matter how the Government tries to cushion the costs its employees incur in moving from one duty station to another, moving is expensive.

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STEPHEN M. DANIELS
Board Judge