



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

April 8, 2013

CBCA 2848-RELO

In the Matter of JAMIE W. LOWE

Jamie W. Lowe, Chamberlain, SD, Claimant.

Anne Schmitt-Shoemaker, Deputy Director, Finance, Finance Center, United States Army Corps of Engineers, Millington, TN, appearing for Department of the Army.

DANIELS, Board Judge (Chairman).

Jamie W. Lowe, an employee of the Army Corps of Engineers, contests the agency's demand that he repay \$2334.74, an amount which the agency alleges that it overpaid him in withholding tax allowance in conjunction with his transfer from Montana to South Dakota.

Background

Mr. Lowe moved to South Dakota in October 2010. According to agency records, he was paid \$13,416.91 in relocation benefits during 2011. The payments were for temporary quarters subsistence expenses incurred in 2010 (\$2770.44 on January 4, plus an additional \$536.92 on January 12); a miscellaneous expense allowance (\$898 on January 7); transaction expenses incurred in selling his residence in Montana (\$7437.23 on February 1); and transaction expenses incurred in buying a residence in South Dakota (\$1774.32 on September 30). Each of these figures was calculated in the following way: (a) entitlement amount, plus (b) withholding tax allowance (33% of entitlement amount), minus (c) federal income tax withheld (25% of entitlement amount plus withholding tax allowance), minus (d) Social Security and Medicare taxes. The Corps provided Mr. Lowe with an Internal Revenue Service (IRS) form W-2 which states that in 2011, the agency gave him compensation in the amount of \$19,845.23, which is the total of entitlements and withholding tax allowance for him on agency records.

Mr. Lowe has provided us with electronic mail messages from the Corps and his own bank statements which show that he did not receive \$13,416.91 in relocation benefits during 2011. Instead, he received \$9993.46 through electronic funds transfers – \$244.99 on January 12, \$536.92 on January 14, \$7437.23 on February 4, and \$1774.32 on October 5. Thus, according to the electronic mail messages and bank statements, Mr. Lowe received the payments of \$536.92, \$7437.32, and \$1774.32 shown in agency records, and a payment of \$244.99 not mentioned by the Corps. He never received, however, the payments of \$2770.44 and \$898 which appear on agency records.

The Corps tells us that “[d]ue to monthly disbursing cut-offs, the dates that we create the vouchers in [the agency’s Integrated Automated Travel System] could be several days before the payments actually disburse to the employee.” If this explanation were to account for the difference between the agency records and the bank statements, we would expect that the payments of \$2770.44 and \$898 would have been made later in January than the dates in agency records. This did not happen, however. Additionally, the explanation does not account for why Mr. Lowe received the payment of \$244.99.

Discussion

The Corps sees this case as involving nothing more than the question of whether the agency properly applied the provisions of the Federal Travel Regulation (FTR) regarding calculation of the relocation income tax (RIT) allowance.

This allowance is paid to federal employees who relocate in the interest of the Government and receive relocation benefits. The benefits are generally considered taxable income to the recipients. To cover the increased tax liability resulting from receipt of the benefits, Congress has authorized agencies to pay an additional sum – a RIT allowance – to the transferred employees. 5 U.S.C. § 5724b(a) (2006).

The procedures for calculating the allowance are prescribed in the FTR, at 41 CFR pt. 302-17 (2011).

The regulation establishes a two-step process for determining an employee’s RIT allowance. In the year in which the agency pays the employee relocation benefits (“Year 1”), it also pays a withholding tax allowance (WTA), which is intended to be a rough approximation of the employee’s increased income tax liability that results from receipt of the benefits and the WTA. 41 CFR 302-17.5(e), (n), -17.7(a). The WTA is calculated at a flat rate based on a marginal tax rate of 28%, regardless of the employee’s actual tax bracket. *Id.* 302-17.7(c). For the following year (“Year 2”), the agency calculates a RIT

allowance which is more appropriately crafted to the employee's tax situation. This second step, determination of the RIT allowance itself, either reimburses the employee for any added tax liability that was not reimbursed by payment of the WTA or causes the employee to repay any excessive amount of WTA. *Id.* 302-17.5(f)(2), (m), -17.8.

James V. Camillocci, CBCA 1709-RELO, 10-1 BCA ¶ 34,320 (2009).

For Mr. Lowe, the Corps calculated a WTA based on a marginal tax rate of 25%, not the prescribed 28%. It then found, in calculating the RIT allowance, that Mr. Lowe had actually paid taxes at the marginal rate of 15% in 2011. His rate was low because he lived in a state, South Dakota, which did not impose a state income tax. The WTA the agency had paid him in 2011 was \$4961.31. Had the WTA been calculated on the basis of a marginal tax rate of 15%, rather than 25%, it would have been \$2626.57. Consequently, the Corps maintains, the RIT "allowance" actually causes Mr. Lowe to have to repay to the agency the difference between these figures, \$2334.74. While we find that the final number is a nickel too high, it is essentially correct – but only if Mr. Lowe actually received the relocation benefits and WTA which the Corps says it paid to him.

The agency's response misses the point the employee makes, however, in bringing this case to us: he did not receive all the benefits (and, consequently, all the WTA) that the agency says it paid. Instead, it paid him \$3423.45 (\$898 plus \$2760.67 minus \$244.99) less than the amount on which its calculations are based.

To correct the Corps' error in underpaying relocation benefits and yet reporting the correct amount of benefits and WTA on Mr. Lowe's IRS form W-2 for 2011, the Corps must now pay to Mr. Lowe \$3423.45, as well as collecting from him the RIT allowance of \$2334.69. Netting these two figures, the Corps owes Mr. Lowe \$1088.76.

STEPHEN M. DANIELS
Board Judge