UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

December 3, 2019

CBCA 6470-RELO

In the Matter of EDWARD H. JOHNSON

Edward H. Johnson, Durham, NC, Claimant.

Gregory Teets, Assistant Administrator for Financial Management, Office of the Chief Financial Officer, Federal Emergency Management Agency, Department of Homeland Security, Winchester, VA, appearing for Department of Homeland Security.

SOMERS, Board Judge (Chair).

Background

Claimant, Edward H. Johnson, a former Department of Homeland Security (DHS), Federal Emergency Management Agency (FEMA) employee, served in the Senior Executive Service (SES). Mr. Johnson retired from federal service in June 2016. The agency does not dispute that, at the time of his retirement, as a departing career employee of SES, Mr. Johnson was eligible for SES separation relocation allowances, also referred to as "last move home" benefits. 5 U.S.C. § 5724(a)(3)(A)(2012); 41 CFR 302-3.304; -3.307(c) (2016) (FTR 302-3.304, -3.307(c)). The agency authorized and obligated funds for his relocation allowance in 2016.

Later, Mr. Johnson requested and received an extension of time to move until 2018. After completing his move, Mr. Johnson submitted documents required for reimbursement. When Mr. Johnson received reimbursement from the agency, he discovered that his moving expenses are considered income under the Tax Cuts and Jobs Act of 2017, Pub. L. 115-97, 131 Stat 2054, 2085 (TCJA), and, as a consequence, were subject to Federal, state and employment tax withholdings as required by Internal Revenue Service (IRS) tax laws. Mr.

Johnson also learned that he was not entitled to receive a withholding tax allowance (WTA) or a relocation income tax allowance (RITA).

Mr. Johnson received a bill from FEMA dated March 11, 2019, in the amount of $2,879.21, for taxes related to household goods transportation expenses. Mr. Johnson notes that his reimbursement has also been reduced for estimated taxes prior to payment. Mr. Johnson questions the taxation of his moving expenses and the determination that he did not qualify for either WTA or RITA. Mr. Johnson seeks full reimbursement for the taxes paid and for taxes deducted from his travel reimbursements. He asserts that the last move was approved, funded, and initially started before the passage of the TCJA and should not be considered taxable.

For the reasons explained below, we agree that Mr. Johnson is not entitled to the benefits sought.

Discussion

1. Taxes

Prior to the passage of the TCJA, an employee could itemize certain travel and moving expenses as deductible expenses. With the passage of that Act, many of the tax deductions were eliminated. The TCJA, which became effective on January 1, 2018, suspended an employee's right to deduct previously qualified moving expense deductions from taxes, effective for tax years 2018 through 2025. *See Heather E. McBride*, CBCA 6373-RELO, 19-1 BCA ¶ 37,346 (discussing the statutory changes). This change directly impacts Mr. Johnson because the Act eliminated some of the deductions he would have had if he had moved before January 1, 2018.

General Services Administration Bulletin (GSA Bulletin) FTR 18-05 (released on May 14, 2018) provides specific information to agencies on the new tax changes affecting relocation entitlements. GSA Bulletin FTR 18-05 also instructed agencies to await further guidance regarding employees who relocated prior to the new tax changes and had payments after January 1, 2018.

On September 21, 2018, the IRS provided more definite information through IRS Notice 2018-75. As a result, GSA issued GSA Bulletin FTR 19-02, which "applies to employees identified in FTR § 302-1.1 who are authorized relocation reimbursements under the FTR and who receive some or all reimbursements, direct payments, or indirect payments on or after January 1, 2018." This bulletin clarified that:

> Employees who relocated on or after January 1, 2018 should refer to FTR Bulletin 18-05 which lists new additional taxable relocation entitlements. Employees reimbursed for those entitlements, either as a direct payment or indirect payment, in 2018 or later, will be subject to taxes for those payments. This FTR bulletin does not change the relocation entitlement tax liability for employees who relocated on or after January 1, 2018.

GSA Bulletin FTR 19-02 advises agencies "to review documentation such as receipts, invoices, or the employee's voucher to determine whether each particular relocation expense is included or excluded from gross income."

In rejecting Mr. Johnson's claim, the agency pointed to FTR 302-17.11, which states that "[a] reimbursement, allowance, or direct payment to a vendor is considered completed in a specific tax year only if the money was actually disbursed to the employee or vendor during the tax year in question." Here, Mr. Johnson received an invoice for taxes stemming from the transportation of his household goods in 2018. We have no record of any vouchers issued prior to January 2018. Thus, under the applicable regulation, we agree that the expense is considered completed in 2018.

Mr. Johnson contends that because the move was approved and funded in 2016, and because he "initiated the last move prior to 2018 based on actions taken to make an offer on the house [he] purchased," Claimant's reply at 4, he should be taxed under the tax rules in existence in 2016. We find no support for this contention.

Indeed, this is not the first time that a change in tax laws had an adverse, and likely unintentional, impact on employees. For example, when Congress passed the Tax Reform Act of 1986, Pub. L. No. 99-514, 100 Stat. 2085 (1986) some employees could not receive certain entitlements:

> Prior to implementation of the Tax Reform Act of 1986, employees transferred in the interest of the government were able to claim virtually all of their relocation expenses upon filing their Form 1040 tax return, since these expenses were treated as an adjustment to gross income. Since implementation of the Tax Reform Act, the reporting of these expenses was moved to Schedule A (Itemized deductions) of the Form 1040 tax return. Since the current tax law does not permit combining the otherwise allowable relocation expense deduction with the standard deduction, transferred employees who cannot itemize their deductions are limited to the use of the standard deduction and are effectively penalized.

> We recognize that the computation formulas . . . do not accommodate non-itemizers like Mr. Feick following the implementation of the Tax Reform act. However, we have no basis to question the computation formula devised by the [GSA], in conjunction with [the IRS], nor do we have authority to amend or modify the provisions of the FTR to grant relief to individuals who did not itemize, since the regulatory authority under 5 U.S.C. § 5724b (1988) has been delegated to the GSA.

Duane Feick, B-248770, at 1 (Comp. Gen. July 23, 1992) (footnote omitted).

In another case reflecting an impact arising from the Tax Reform Act, an employee resigned from a position with civil service retirement coverage at the end of 1986. She did so because the Tax Reform Act allowed a working couple with an adjusted gross income over $40,000 to claim the maximum $4,000 deduction for IRA contributions in 1987 only if neither spouse actively participates in an employer- maintained pension plan during the year. The employee, working with personnel specialists, devised an arrangement under which she would resign from her position effective December 31, 1986, in order to claim the deduction. This employee received pay for her work between December 21 and December 31, 1986, in January 1987. The IRS ultimately determined that, because the employee had received pay subject to deduction for retirement contributions in 1987, she would be regarded as an active participant in a retirement plan during 1987 for purposes of the rules governing IRA deductions. *See* Comp. Gen. B-228991 (September 29, 1987).

As these cases illustrate, we have no basis to question the interpretation of the impact of the TCJA by the IRS or GSA. We cannot amend or modify the provisions of the FTR to grant relief to Mr. Johnson.

2. WTA and RITA

Mr. Johnson does not agree with the agency's determination that qualified SES employees performing a last move home are not eligible for either WTA or RITA. Statutes and regulations supports the agency's interpretation.

First, as the agency correctly notes, the TCJA never altered the fact that a qualified SES employee performing a last move home is not entitled to WTA or RITA since the SES employee is not transferring from one official station or agency to another permanent duty station. Pursuant to statute, only employees transferring from one official station to another are entitled to certain relocation benefits, to include WTA and RITA when appropriate. 5 U.S.C. § 5724(a),§ 5724a(a).

Regulations are consistent with this statutory interpretation. For example, FTR 302-3.101, Table G, entitled "Last Move Home for SES Career Appointees Upon Separation" identifies the relocation allowances that an agency must pay or reimburse. Column 1 states that the agency must pay or reimburse (1) transportation for employee and immediate family member(s); (2) per diem for the employee only; (3) transportation and temporary storage of household goods; and (4) transportation of a mobile home or boat used as a primary residence. The agency has the discretion to pay or reimburse the SES career appointee for the shipment of a privately owned vehicle. Table G does not identify WTA or RITA as part of the "last move home" allowances.

The agency notes that another section of the FTR, specifically § 302-17.6, which, in the question and answer format used in portions of the regulation, states:

> **Who is not eligible for the WTA and the RITA**?
>
> You are not eligible for the WTA and the RITA if you are:
> (a) A new appointee;
> (b) Assigned under the Government Employees Training Act; or
> (c) Returning from an overseas assignment for the purpose of separation from Government service.

This section does not identify an SES last move home as a category that is not eligible for WTA or RITA. Therefore, the agency asked the GSA Office of Government wide Policy (OGP) to explain why an SES last move home was not on this list–OGP responded that it should have been listed and that GSA is currently drafting an FTR amendment to update § 302-17.6 and will include this category in the list.

In his response to the agency's submission, Mr. Johnson contends that "GSA is 'covering' its policy 'butt' and again arbitrarily applying its rules without basis." We disagree. While GSA may have amended FTR 302-17.6 to include the last move home category, as we noted above, FTR 302-3.101, Table G, does identify what the last move home recipient is entitled to receive and what it is not. In examining the FTR, our role is to apply the rules as written, and to the extent that they are unclear, interpret them in a rationale way. *Stephen R. Rotton*, CBCA 5137-RELO, 16-1 BCA ¶ 36,294 at 176,995. Here, the section that does address last move home rights is clear.

We find that Mr. Johnson has received all of the benefits to which he is entitled. The fact that change in the tax laws impacted Mr. Johnson's reimbursements is not something over which we have any control. Mr. Johnson's claim is denied.

Jeri Kaylene Somers
JERI KAYLENE SOMERS
Board Judge