



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

June 29, 2020

CBCA 6691-RELO

In the Matter of NATHAN G. FOX

Nathan G. Fox, Claimant.

Tracey Z. Taylor and Catharine DeBelle, Office of Counsel, United States Army Corps of Engineers, Alexandria, VA, appearing for Department of the Army.

RUSSELL, Board Judge.

Claimant, Nathan G. Fox, seeks review of the demand for repayment made by the United States Army Corps of Engineers (USACE or agency) for taxes that the agency paid on the shipment and storage of household goods relating to claimant's permanent change of station (PCS).

Background

In January 2019, USACE authorized claimant to relocate from Winchester, Virginia, to Wiesbaden, Germany. USACE further authorized claimant PCS costs, including the cost of shipment of his household goods. These costs equaled \$7876.35, which USACE paid directly to the vendor. By letter dated December 10, 2019, USACE's Deputy Director, Finance, sent claimant a letter stating that, pursuant to the Tax Cuts and Jobs Act of 2017, claimant owed \$772.49 for his share of federal taxes on the shipment costs. According to the travel voucher summary submitted in this case, the amount covered \$626.07 for Federal Insurance Contribution Act (FICA) taxes and \$146.42 for Medicare taxes.

In an attachment to its December 10, 2019, demand letter, which included the heading, “Collection of Your Debt,” USACE seemed to identify the Civilian Board of Contract Appeals (Board) as the entity that could conduct a hearing on the validity of USACE’s demand for reimbursement of the taxes, or the amount of the debt. On December 23, 2019, Mr. Fox sought review by the Board of the agency’s demand for payment.

On April 8, 2020, USACE issued claimant a corrected letter and a revised attachment. In the corrected letter, USACE again demanded reimbursement of \$772.49 for the paid taxes, and in its revised attachment, it identified its Debt Claims Management Office as responsible for conducting hearings on challenges to the agency’s attempt to collect reimbursement of the paid taxes. Also in the attachment, USACE noted the Board’s authority to consider challenges related to expenses incurred by a federal employee while on official temporary duty travel and in connection to a relocation to a new duty station.

In response to the Board’s inquiries on how he wished to proceed with his claim (i.e., as one challenging USACE’s debt collection effort or one more narrowly focused on challenging whether he owed the underlying relocation expense at all), claimant requested that the Board either (1) “state that [it] do[es] not have authority to make a ruling on all aspects” of his claim and “close the case . . . for that reason,” or, “if that is not an option,” (2) “make[] a ruling under the authority that [the Board] do[es] have, and if possible, note the limitations of the authority and state that the Board did not have authority to consider all aspects covered” in his claim. Presumably, claimant is asking the Board to determine whether it has the authority to consider both the USACE’s right to collect a debt from him and whether he actually owes the relocation expense at issue.

Discussion

As for claimant’s inquiry about the scope of the Board’s authority, the Board cannot state that it has absolutely no authority to decide any aspect of his case. We do lack authority to act as USACE’s debt collection hearing official as seemingly suggested in the attachment to the agency’s letter of December 10, 2019. *See Joshua W. Hughes*, CBCA 6678-RELO, 20-1 BCA ¶ 37,555; *see also Michael A. Metje*, CBCA 6699-RELO (Apr. 29, 2020) (noting that the Board does not conduct debt hearings for the USACE). However, pursuant to 31 U.S.C. § 3702(a)(3) (2018), the Administrator of General Services has the authority to “settle claims involving expenses incurred by Federal civilian employees for official travel and transportation, and for relocation expenses incident to transfers of official duty station.” The Administrator has delegated this authority to the Board. *Willie J. Chandler*, CBCA 5286-RELO, 16-1 BCA ¶ 36,348. Accordingly, under 31 U.S.C. § 3702, we can consider claimant’s challenge as one disputing that he is responsible for payment of the taxes, an

expense incurred as a part of his relocation to Germany. We decide claimant's case pursuant to this authority.

As for the expense, claimant does not dispute that he incurred the shipment costs in relocating to Germany. These shipment costs which the agency paid on his behalf became taxable with the passage of the Tax Cuts and Jobs Act of 2017. *See Louis J. Boudousquie*, CBCA 6698-RELO (May 19, 2020). By law, however, the agency cannot pay employment taxes (FICA or Medicare taxes) on behalf of an employee, which the USACE did in this instance. 41 CFR 302-17.22(d) (2018) (Federal Travel Regulation (FTR) 302-17.22(d)); *see Michael A. Metje*. Accordingly, claimant must repay USACE the employment taxes (\$626.07 for FICA and \$146.42 for Medicare) that were paid on his behalf.

Claimant argues that the debt is erroneous because he was informed by the Army Forces Tax Counsel that the shipment and storage of household goods would not be taxable, guidance on which he relied in making the decision to accept the overseas job position. As noted by a predecessor Board, “[d]enying [an] employee payment of costs . . . incurred in reliance on the Government’s commitment may seem unfair.” *Teresa M. Erickson*, GSBCA 15210-RELO, 00-1 BCA ¶ 30,900. However, “[t]he Government is not bound by the erroneous advice of its officials, even when the employee has relied on this advice to his detriment.” *Daryl J. Steffan*, CBCA 3821-TRAV, 14-1 BCA ¶ 35,734 (quoting *Flordeliza Velasco-Walden*, CBCA 740-RELO, 07-2 BCA ¶ 33,634). Importantly, neither the Board nor USACE has the authority to waive the applicability of the Tax Cuts and Jobs Act, *Heather E. McBride*, CBCA 6373-RELO, 19-1 BCA ¶ 37,346, and there is no dispute as to its application in this case.

Decision

For reasons stated herein, the Board denies the claim.¹

Beverly M. Russell

BEVERLY M. RUSSELL
Board Judge

¹ Because it appears that USACE did not recognize the statutory change regarding the taxes to be assessed on the shipment of household goods until after the shipment had been completed and paid for, the Board is unclear whether the USACE should recalculate the withholding tax allowance and/or calculate a relocation income tax allowance to which claimant might be owed. *See Louis J. Boudousquie*. We leave it to the agency to determine whether claimant is owed an amount for these allowances.