UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

May 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).

Earlier this year, we resolved a claim by Jamie W. Lowe, an employee who had been transferred by the Army Corps of Engineers, regarding the agency's demand that he repay $2334.74 in allegedly overpaid withholding tax allowance for 2011. We determined that Mr. Lowe had been overpaid almost as much as the agency demanded, $2334.69. Because the agency did not respond to Mr. Lowe's assertion that he had not received $3423.45 in relocation benefits that it said it had paid, however, we did not direct him to repay the $2334.69. Instead, we ordered the agency to pay him the difference between the two amounts, $1088.76.

The Corps has moved for reconsideration of our decision. In so moving, it has shown us – for the first time – that it had given Mr. Lowe a travel advance of $9500 back in 2010. As of the beginning of 2011, $3423.45 remained outstanding on the advance, so the agency had deducted that amount from relocation benefits otherwise due to the employee in 2011. Mr. Lowe chose not to respond to the motion.

What should we do with the information newly-provided by the Corps? Under our rules for considering relocation benefit claims by transferred federal civilian employees, an agency is required to include with its response "[a]ny additional information the agency considers necessary to the Board's review of the claim." 48 CFR 6104.403(a)(3) (2012).

Clearly, by its own admission, the Corps did not comply with this requirement; it now believes that we need the new data to resolve the claim. We decided the case on the basis of all the information before us, and that is all parties should expect us to do.

As we have held in contract cases, however, this does not mean that we may ignore what the Corps currently tells us. In evaluating a request for reconsideration, a tribunal must "strike a delicate balance between two countervailing impulses: the desire to preserve the finality of judgments and 'the incessant command of the [tribunal's] conscience that justice be done in light of *all* the facts.'" *Tidewater Contractors, Inc. v. Department of Transportation*, CBCA 50-R, 07-2 BCA ¶ 33,618; *Advanced Injection Molding, Inc. v. General Services Administration*, GSBCA 16504-R, et al., 05-2 BCA ¶ 33,097; *Twigg Corp. v. General Services Administration*, GSBCA 14639-R, 99-1 BCA ¶ 30,310 (all quoting *Seven Elves, Inc. v. Eskenazi*, 635 F.2d 396, 401 (5th Cir. 1981)). Reopening the record to receive additional evidence is appropriate only in exceptional circumstances. One of those circumstances is that "material evidence exists to indicate that findings of fact central to the ultimate decision are in error and that inclusion of the new evidence would probably produce a different result." *Twigg*. Thus, "[r]econsideration is always appropriate where the tribunal is convinced that correcting the original decision may be necessary to avoid a manifest injustice." *Tidewater Contractors* (quoting *Twigg Corp.*).

We can well appreciate why Mr. Lowe was confused by the Corps' actions regarding payment of his relocation benefits, including the withholding tax allowance. The information the agency has recently given us is tardy, and the explanation accompanying it could have been far more clear. Nevertheless, the material does show that the agency has over time paid the employee everything it says it has paid. The agency's demand for repayment is, consequently, valid (except that it is a nickel too high). We therefore modify our earlier decision to conclude that Mr. Lowe owes the Corps $2334.69.

STEPHEN M. DANIELS
Board Judge