



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

July 23, 2013

CBCA 3436-TRAV

In the Matter of JEFFREY E. KOONTZ

Jeffrey E. Koontz, APO Area Europe, Claimant.

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

GOODMAN, Board Judge.

Claimant, Jeffrey E. Koontz, a civilian employee of the United States Army Corps of Engineers, has asked this Board to review an agency determination arising from his claim for travel expenses.

Background

On May 17, 2013, this Board issued a decision in response to a travel claim by claimant. *Jeffrey E. Koontz*, CBCA 3251-TRAV. We held that claimant was due a refund from the agency in the amount of \$41,067.99, the total amount he had paid in response to notices of debt collection. The notices of debt collection, referencing the Debt Collection Act of 1982, Public Law 97-365, 31 U.S.C. §§ 3701 *et seq.* (the Debt Collection Act), and provisions of the Department of Defense Financial Management Regulations (DoDFMR), had been issued after an agency audit had allegedly discovered overpayments of previously-reimbursed travel expenses.

On June 4, 2013, the agency refunded the amount of \$41,067.99 to claimant. By letter dated June 8, 2013, claimant requested that the agency compensate him for lost interest on

the funds he had paid to the agency, from the date of payment until the date of refund.¹ In support of his claim for interest, claimant cited the Back Pay Act, 5 U.S.C. § 5596 (2006).

The agency denied claimant's request for interest by letter dated July 8, 2013, stating:

The Department of Defense Financial Management Regulation (DoDFMR) does not instruct, authorize or allow an Agency to pay interest when refunding a debtor based on a hearing decision or granting of waiver. The refund was issued timely; 18 days after [the agency] received the decision notice.

The agency's response to the claim filed with this Board did not address claimant's assertion that he was entitled to interest pursuant to the Back Pay Act.

Claimant has asked this Board to review the agency's determination that no interest is due on the refunded amounts.

Discussion

The purpose of the Debt Collection Act is to provide a comprehensive statutory approach to the collection of debts due the Federal Government. Collection of debts owed by federal employees to the Federal Government is authorized by means of salary offset, if the debt is not paid in full upon notice by the employing agency. 5 CFR 179.201 (2012). In this case, claimant elected to pay the alleged debt in full upon receipt of notices of debt collection rather than have the offset procedures applied to his pay.

The Office of Personnel Management (OPM) issues regulations governing collection of debts pursuant to the Debt Collection Act and addresses the subject of refunds in those regulations in the following provisions:

Refunds.

(a) The Office shall promptly refund any amounts . . . when: . . .

(2) An administrative or judicial order directs the Office to make a refund.

¹ Six bills of collection totaling \$34,998.39 were issued on September 18, 2012. Claimant paid this total on October 23, 2012. Two bills totaling \$6,069.58 were issued December 4, 2012. Claimant paid this total on May 29, 2013.

(b) Unless required or permitted by law or contract, refunds under this subsection shall not bear interest.

5 CFR 179.215.

Accelerated procedures.

Amounts recovered . . . but later found not to be owed to OPM shall be promptly refunded.

5 CFR 179.308.

When these regulations were first proposed in 1994, they were issued for public comment. When the final rule was issued, it was noted that:

A commenter wished to add “with interest” at the end of [5 CFR 179.215]. The Debt Collection Act of 1982 requires the assessment of interest, penalty fees, and administrative costs on delinquent debts as a means of strengthening enforcement of collections; *however, it makes no provision to pay interest to the debtor for erroneous collection.* OPM is not authorized to make payments [of interest] in the absence of a specific statute or authority permitting such payments.

59 Fed. Reg. 35,214 (July 11, 1994) (emphasis added).

Thus, in order for a refund of a debt collected pursuant to the Debt Collection Act to be returned with interest, there must be statutory or contractual authority that permits the interest to be paid. The agency believes there is no statutory or contractual authority, and its own financial management regulations do not authorize or require payment of interest on refunds. Accordingly, the agency denied claimant’s request for interest.

Claimant, in his request for review of the agency’s denial of interest, states his belief that the Back Pay Act provides statutory authority for his recovery of interest on his refund. The Back Pay Act provides that amounts payable under one portion of that law “shall be payable with interest.” 5 U.S.C. § 5596(b)(2)(A). The portion in question states:

An employee of an agency who, on the basis of a timely appeal or an administrative determination (including a decision relating to an unfair labor practice or a grievance) is found by appropriate authority under applicable law, rule, regulation, or collective bargaining agreement, to have been affected by

an unjustified or unwarranted personnel action which has resulted in the withdrawal or reduction of all or part of the pay, allowances, or differentials of the employee is entitled, on correction of the personnel action, to receive for the period for which the personnel action was in effect an amount equal to all or any part of the pay, allowances, or differentials, as applicable which the employee normally would have earned or received during the period if the personnel action had not occurred.

Id. § 5596(b)(1)(A)(i).

In *Synita Revels*, GSBCA 14935-RELO, 00-1 BCA ¶ 30,716 (1999), one of this Board's predecessor boards analyzed the origin and purpose of the Back Pay Act with regard to the issue of whether interest could be paid when relocation expenses were not timely paid by the employee's agency. In that decision, the Board stated:

The Senate Report accompanying the Back Pay Act says that the bill "would consolidate and liberalize existing law." S. Rep. No. 1062, 89th Cong., 2d Sess., *reprinted in* 1966 U.S.C.C.A.N. 2097. The consolidation applied to laws dealing with separation, suspension, and demotion. 1966 U.S.C.C.A.N. at 2098. The liberalization was to "allow [] credit for pay increases and accumulation of annual leave." *Id.* at 2097. In either event, the law was supposed to pertain only to "the restoration of an employee to his position after an adverse action against him has been found." *Id.*

00-1 BCA at 151,710.

It is clear that the collection of the debt from claimant pursuant to the Debt Collection Act of 1982 was not an action contemplated within the scope of the Back Pay Act. Claimant's position was not affected by the collection of the debt, as he was neither separated, suspended, nor demoted, and the payment of the refund was therefore not the result of restoring the claimant to his position.

We find no authority in law or contract that would permit payment of interest on the refund received by claimant.

Decision

The claim is denied.

ALLAN H. GOODMAN
Board Judge