



UNITED STATES  
CIVILIAN BOARD OF CONTRACT APPEALS

---

March 16, 2020

CBCA 6678-RELO

In the Matter of JOSHUA W. HUGHES

Joshua W. Hughes, Fort Peck, MT, Claimant.

Tracey Z. Taylor, Jesse C. Lee, and Catharine S. DeBelle, Assistant Center Counsel, United States Army Corps of Engineers, Alexandria, VA; and Anne M. Schmitt-Shoemaker, Deputy Director, Finance Center, United States Army Corps of Engineers, Millington, TN, appearing for Department of the Army.

**LESTER**, Board Judge.

The United States Army Corps of Engineers (USACE), through its Finance Center, issued a debt collection letter purportedly under the auspices of 5 U.S.C. § 5514 (2018) to claimant, Joshua W. Hughes, demanding that he reimburse the agency \$3991.04 for federal income tax withholding (FITW) and other taxes that the agency paid in association with Mr. Hughes' permanent change of station (PCS). In the collection letter, the USACE identified the Board as the hearing official for any challenge to the agency's debt collection effort. Mr. Hughes filed a challenge to the letter with the Board, acknowledging that the agency was correct to pay FITW but disputing the amount paid. The USACE then asked the Board to dismiss Mr. Hughes' challenge as premature because Mr. Hughes has not submitted a formal relocation expense claim to the agency, as it asserts is required by Board Rule 401(c) (48 CFR 6104.401(c) (2019)), challenging the agency's demand.

We lack authority to act as the USACE's debt collection hearing official under 5 U.S.C. § 5514. Nevertheless, we can consider Mr. Hughes' challenge to the USACE's payment demand under our authority to consider travel and relocation expense claims

pursuant to 31 U.S.C. § 3702 and find that it is ripe for decision. On the merits, we deny Mr. Hughes' claim.

### Background

In May 2019, Mr. Hughes, an employee of the USACE, transferred to a new permanent duty station in Fort Peck, Montana. His travel orders authorized various relocation expenses for Mr. Hughes and his family, some of which are taxable. The orders also authorized a relocation income tax allowance (RITA), but, according to the agency, Mr. Hughes elected not to receive a withholding tax allowance.

On November 12, 2019, the USACE Finance Center issued a debt collection letter to Mr. Hughes, indicating that Mr. Hughes needed to reimburse the agency for FITW, Federal Insurance Contributions Act (FICA), and Medicare taxes arising out of PCS costs that the agency had paid on Mr. Hughes' behalf. The letter demanded payment in full by December 12, 2019, subject to initiation of debt collection procedures and penalties. Nevertheless, the letter indicated that Mr. Hughes could request a hearing to contest the validity of the debt or the amount of the debt by filing a petition for a hearing with the USACE's hearing official, which the letter identified as the Board.

On December 12, 2019, Mr. Hughes filed with the Board what he called "a petition for a hearing to dispute the validity and amount of my travel overpayment debt, as authorized by 5 USC 5514 and 5 CFR 550.1104." The Board docketed that petition as CBCA 6678-RELO. Mr. Hughes asserted in his petition that he was "disputing the amount paid [to the Internal Revenue Service (IRS)] for [FITW] based on the IRS Supplemental Wages flat tax rate." He did not contest the FICA and Medicare tax payments, but complained that the agency miscalculated FITW by using method 1b in chapter 7 of IRS Pamphlet 15 (Circular E), rather than method 1a. According to Mr. Hughes, the agency's error resulted in a FITW overpayment to the IRS of \$598.01.

The agency responded to Mr. Hughes' petition on January 15, 2020. It first argued that we should dismiss this matter as premature because he did not exhaust his administrative remedies with the agency before filing this appeal, as required by Board Rule 401(c). Alternatively, it argued that, if we were to consider the merits of Mr. Hughes' petition, we should deny it and permit Mr. Hughes to submit a RITA application that might reimburse him for the FITW payment.

Soon thereafter, on January 21, 2020, Mr. Hughes provided the Board with a copy of a reissued debt collection notice from the USACE Finance Center, dated January 3, 2020, that apparently replaced the November 12, 2019, letter after Mr. Hughes complained about

it to the agency. Like its predecessor, it demanded that Mr. Hughes reimburse the agency \$3991.04 in FITW, FICA, and Medicare taxes, but changed the payment due date to February 2, 2020. Like the November 12, 2019, letter, the January 3, 2020, letter identified the Board as the USACE's hearing official for any debt collection challenge. The USACE had not mentioned the January 3, 2020, letter in its January 15, 2020, submission.

By order dated January 31, 2020, we asked the USACE to clarify the basis upon which it believed the Board could serve as its hearing official under the authority of 5 U.S.C. § 5514. In response on February 11, 2020, the USACE notified us that its issuance of a debt collection letter identifying the Board as the hearing official was "erroneous," that the agency has its own procedure for providing employees with a hearing pursuant to 5 U.S.C. § 5514, and that the agency was in the process of correcting the defective notice and reissuing a new debt collection letter, although it is unclear whether, as of the date of this decision, the agency has issued a corrected notice.

Subsequently, because Mr. Hughes' original petition indicated that he was seeking a hearing from the Board under 5 U.S.C. § 5514, we asked Mr. Hughes whether, were we to find that we lacked authority to provide a hearing under that statutory authority, he would want the Board to consider this matter using its authority under 31 U.S.C. § 3702 to decide relocation expense claims. Mr. Hughes responded that, if we could decide the matter under that authority, we should do so.

### Discussion

#### Mr. Hughes' Debt Collection Challenge

Pursuant to 31 U.S.C. § 3702, 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 stations." *Id.* § 3702(a)(3). The Administrator has delegated that authority to the Board. *Keith E. Mayo*, CBCA 2578-RELO, 12-1 BCA ¶ 35,008, at 172,042; 48 CFR 6104.401(a) (2019).

In its notices to Mr. Hughes demanding payment of the taxes at issue, the USACE represented that the Board would serve as its hearing official under 5 U.S.C. § 5514, and, in his original submission to the Board, Mr. Hughes requested a hearing from the Board under that statute. We have no authority to serve in such a position under that statute, as we indicated in 2015 in a prior case in which the agency, as here, had incorrectly informed Mr. Hughes that the Board would serve as the USACE's hearing official:

Although the agency undoubtedly has designated a forum for conducting hearings to determine the validity of debts asserted under the federal debt collection regulations, it has not delegated that authority to this Board. *See* 5 U.S.C. § 5514(a)(2)(D) (2012). Without such authority, we cannot conduct the hearing that claimant is seeking and are required to dismiss this case.

*Joshua W. Hughes*, CBCA 4892-RELO, 16-1 BCA ¶ 36,201, at 176,656 (2015); *see Brian R. Wybrecht*, CBCA 5475-TRAV, 16-1 BCA ¶ 36,497, at 177,842 n.1 (“Our claims settlement process does not include a hearing,” and, “[i]nstead, we issue decisions after considering written statements.”).

Although, in the past, the Board has accepted requests from agencies to provide judges to conduct such hearings and issue decisions under 5 U.S.C. § 5514 regarding alleged travel debts and repayment schedules, it has done so under specific agreements with those agencies. *Alexander J. Qatsha*, GSBCA 15494-RELO, 01-1 BCA ¶ 31,364, at 154,895; *Patricia Russell*, GSBCA 14758-RELO, 99-1 BCA ¶ 30,291, at 149,806. The Board has no such agreement in place with the USACE Finance Center. Absent such an agreement, the fact that the USACE Finance Center has, apparently since at least 2015, been issuing defective debt collection letters that misidentify the Board as the USACE’s hearing official does not somehow change the Board’s status. As a result, we must dismiss Mr. Hughes’ request that we decide this matter as a hearing official under 5 U.S.C. § 5514.

#### Necessity that Mr. Hughes Submit a Claim

Mr. Hughes has informed us that, if we lack authority to decide this matter under 5 U.S.C. § 5514, we should decide it as a relocation expense claim under the authority of 31 U.S.C. § 3702. The agency tells us that this matter is not ripe for decision as a relocation claim because Mr. Hughes has not yet “filed a claim with the Agency disputing the debt that is the subject of this appeal.” Agency Response at 2. Because Mr. Hughes “did not exhaust his administrative remedies with the agency before electing to file this appeal,” it argues, his “appeal is ultimately premature.” *Id.* at 3. In support of this argument, the USACE cites to Board Rule 401(c), which provides that “[a]ny claim for entitlement to travel or relocation expenses must first be filed with the claimant’s own department of agency” and that “[t]he agency shall initially adjudicate the claim” before the claimant requests review by the Board. 48 CFR 6104.401(c).

Under our procedural rules, before coming to the Board with a travel or relocation claim, the claimant first must submit the claim to his or her own agency so that, before we review the matter, the agency has already had an opportunity to consider and to adjudicate the claim. *John M. Morgan*, CBCA 6370-TRAV, et al., 19-1 BCA ¶ 37,280, at 181,385-86.

If the agency has not adjudicated the claim, it is ordinarily premature for us to do so in the first instance. *George Oliver*, GSBCA 14550-TRAV, 98-2 BCA ¶ 29,800, at 147,612.

“Nevertheless, the requirement for a prior claim submission to and decision by the agency comes from the Board’s rules, not from the language of 31 U.S.C. § 3702(a)(3) itself.” *Scott E. Beemer*, CBCA 4250-RELO, 15-1 BCA ¶ 35,960, at 175,712. “[I]n the absence of a statute requiring exhaustion of remedies, application of a rule like [Rule 401(c)] is a matter of judicial discretion.” *Id.* (quoting *Leon Rodgers, Jr.*, GSBCA 14678-TRAV, 99-1 BCA ¶ 30,376, at 150,156). We have previously held that a claimant need not satisfy the prior agency submission requirement of Rule 401(c) if he or she can show that doing so “would be futile because of the certainty of an adverse decision” by the agency. *Scott E. Beemer*, 15-1 BCA at 175,712 (quoting *Leon Rodgers, Jr.*, 99-1 BCA at 150,156).

A central reason for requiring an employee to submit his or her claim to the agency before coming to the Board is to ensure that the claimant has “an agency determination from which to appeal” that creates an actual dispute between the employee and the agency. *Lynn A. Ward*, CBCA 2904-RELO, 13 BCA ¶ 35,276, at 173,153. Here, the agency’s written demand for payment to Mr. Hughes plainly sets forth the agency’s belief that the agency is entitled to recoup the taxes at issue in the amount identified. Mr. Hughes has objected to that demand and told the agency why he thinks the agency has paid too much FITW. Despite that fact, the USACE has continued to press Mr. Hughes to reimburse it for the taxes at issue even as this matter has been pending before the Board. The futility of requiring Mr. Hughes to submit his own “claim” to the agency challenging the agency’s payment demand seems clear. No purpose other than delay would be served by requiring the claimant to submit a more formal challenge to the agency’s payment demand. In these circumstances, we have authority to consider Mr. Hughes’ claim.

We note that, on numerous occasions where an agency has issued a travel or relocation expense repayment demand to an employee, we have not required the employee to follow up with a formal “claim” to the agency disputing that demand before coming to the Board, but have decided the cases without requiring further agency proceedings. *See, e.g., Winston S. Zack*, CBCA 6382-TRAV, 19-1 BCA ¶ 37,308; *J. Jacob Levenson*, CBCA 5418-TRAV, 17-1 BCA ¶ 36,714; *Benjamin C. Brdlik*, CBCA 3243-RELO, 13 BCA ¶ 35,358; *Carolyn R. Working*, CBCA 3059-TRAV, 13 BCA ¶ 35,270; *Catherine E. Grow*, CBCA 2463-TRAV, 11-2 BCA ¶ 34,885; *Donavan L. May*, CBCA 2188-TRAV, 11-1 BCA ¶ 34,658; *Robert J. Blanchette*, GSBCA 16686-RELO, 05-2 BCA ¶ 33,105; *Jack N. Goldstein*, GSBCA 16647-RELO, 05-2 BCA ¶ 33,057; *Jennings W. Bunn, Jr.*, GSBCA 15656-TRAV, 02-2 BCA ¶ 31,930. We see no reason to change that practice now.

### Mr. Hughes' Challenge to the FITW Calculation

With regard to the merits of Mr. Hughes' challenge, Mr. Hughes agrees that the USACE was right to pay FITW on his relocation benefits, but he thinks that the USACE paid \$598.01 too much to the IRS. He wants his bill reduced by that amount.

The USACE calculated the FITW due on Mr. Hughes' reimbursable relocation expenses by reference to chapter 7 of IRS Publication 15 (Circular E), "Employer's Tax Guide," which addresses employer withholdings from supplemental wages. That guide provides the employer with two options for supplemental wages withholding if the employer "withheld income tax from an employee's regular wages in the current or immediately preceding calendar year": (1) method 1a, through which the employer "withhold[s] a flat 22% (no other percentage allowed)"; or (2) method 1b, through which different calculations are employed depending on the circumstances. The guide also provides, though, that, "if [the employer] didn't withhold income tax from the employee's regular wages in the current or immediately preceding calendar year, use method 1b. This would occur, for example, when the value of the employee's withholding allowances claimed on Form W-4 is more than the wages."

Mr. Hughes says that, when he reported to his new command in Fort Peck, he submitted a Form W-4 "that exempts me from federal income taxes because the value of my claimed withholding allowances is more than my regular wages" and that he has not paid federal income taxes on his regular wages for several years. If he could show no withholding for both the 2018 or 2019 tax years, he might technically be correct that the USACE should have used method 1b, rather than 1a, to calculate his FITW on the relocation benefits. Nevertheless, we need not resolve that issue because Mr. Hughes has submitted a copy of only the Form W-4 that he provided his Fort Peck PDS in July 2019. He has presented no evidence about his withholding status in 2018 or earlier in 2019. "The burden . . . is on a claimant to prove all of the elements of his or her claim in a relocation case," *Benjamin A. Hanfelder*, CBCA 1294-RELO, 08-2 BCA ¶ 33,987, at 168,102, and Mr. Hughes has failed to establish that the USACE had to use method 1b instead of method 1a in calculating his FITW. Further, he has provided no evidence supporting his \$598.01 overpayment calculation.

Although a lack of proof precludes a merits decision in Mr. Hughes' favor, bringing this issue to the Board seems to have made resolution of this matter much more complicated than it needed to be. If the agency actually paid too much FITW, Mr. Hughes will presumably get a refund when he files his next federal tax return. Further, as the USACE has suggested, after Mr. Hughes files his next federal tax return, he can submit a RITA claim to

recover “the actual tax liability incurred by the employee as a result of [his] taxable relocation benefits.” 41 CFR 302-17.1 (Federal Travel Regulation 302-17.1).

Decision

Because we lack authority to serve as a hearing official for the USACE under 5 U.S.C. § 5514, we dismiss Mr. Hughes’ submission to the extent that it asks us to do so. In evaluating Mr. Hughes’ submission as a relocation claim under the authority of 31 U.S.C. § 3702, we deny the agency’s request that we dismiss the claim as premature. On the merits, we deny the claim.

*Harold D. Lester, Jr.*  
HAROLD D. LESTER, JR.  
Board Judge