



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

May 19, 2020

CBCA 6698-RELO

In the Matter of LOUIS J. BOUDOUSQUIE

Louis J. Boudousquie, Claimant.

Tracey Z. Taylor and Catharine DeBelle, Office of 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.

SULLIVAN, Board Judge.

Claimant, Louis Boudousquie, seeks review of the demand for repayment made by the U.S. Army Corps of Engineers (USACE) for taxes that the agency paid on relocation costs that claimant incurred in 2018. Because the agency was required to pay these taxes and claimant has not provided an adequate challenge to the amount paid by the agency on his behalf, we uphold USACE's demand for repayment.

Background

In June 2018, the agency authorized claimant to relocate from the United Arab Emirates to California. USACE further authorized payment of specified relocation expenses, including the costs for the shipment of claimant's household goods with the costs to be invoiced to and paid directly by the agency.

Claimant obtained a quote from National Shipping Gulf Agency Co. (GAC) in the amount of \$6504.13, to ship his goods, estimated to measure twenty-three cubic meters, in a single twenty-foot container. The quote does not provide a price per pound. According to the certified weight ticket from GAC that claimant included in his submission to the Board,

the shipment weighed a total of 7483 pounds, measured forty-four cubic meters, and was packed in seven crates.

The agency paid three invoices for the shipment, storage, and assembly of claimant's household goods in an amount totaling \$15,815. All three invoices bear claimant's name and the number of his travel authorization. The largest of these invoices was for the shipment of the goods at a rate of \$1.7127 per pound, for a total of \$12,816.13. The second invoice, in the amount of \$2733.37, was for the storage of goods; and the third, in the amount of \$265.50, was for the assembly of furniture. Claimant acknowledges that he incurred the assembly costs.

By letter dated December 4, 2019, USACE demanded repayment of taxes, in the amount of \$4689.15, that it had paid on claimant's behalf on these relocation costs. This amount is the sum of three taxes assessed on the \$15,815 that USACE paid for the shipment of goods—\$3479.30 for federal income withholding tax (FIWT), \$980.53 for Federal Insurance Contributions Act (FICA), and \$229.32 for Medicare taxes. USACE issued a corrected demand letter on April 6, 2020, that explained claimant's appeal rights under the Debt Collection Act 5 U.S.C. § 5514 (2018), and how he could appeal to the Board the underlying determination that taxes were owed.¹

Discussion

Claimant challenges USACE's demand for repayment on two grounds. First, claimant asserts that collecting taxes on his relocation costs is a change to the terms of his employment agreement. He was told that the agency would bear the costs of his relocation. Second, claimant argues that the taxes were calculated on costs that far exceed the amount he was quoted for the shipment of his goods.

The shipment costs that the agency paid on claimant's behalf became taxable with the passage of the Tax Cuts and Jobs Act of 2017, Public Law 115-97, which, effective January 1, 2018, suspended qualified moving expense deductions, along with employer reimbursements and payments of moving expenses, for tax years 2018 through 2025. "As a result, various relocation expenses reimbursed to federal employees, including the shipment and storage of household goods, which were previously non-taxable, are taxable." *Christy A. Cox*, CBCA 6671-RELO, 20-1 BCA ¶ 37,505.

¹ The first demand letter incorrectly identified the Board as the hearing official for a challenge under the Debt Collection Act.

Due to the statutory change making these costs a taxable benefit, the agency paid taxes on these relocation costs on claimant's behalf. Pursuant to regulation, the agency cannot pay employment taxes (FICA or Medicare taxes) on behalf of an employee. 41 CFR 302-17.22(d) (2018) (Federal Travel Regulation (FTR) 302-17.22(d)); *Michael A. Metje*, CBCA 6699-RELO (Apr. 29, 2020). Therefore, claimant must repay USACE these employment taxes (\$980.53 for FICA and \$229.32 for Medicare).

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, USACE has not calculated the withholding tax allowance (WTA) or relocation income tax allowance (RITA) to which claimant may be owed for these expenses. We leave it to the agency to determine what amount of FIWT claimant may owe after the calculation of these allowances.

Regarding claimant's challenge to the amount that USACE paid on his behalf, the documents provided support the agency's figure. The largest invoice, in the amount of \$12,816.13 for the shipment of 7483 pounds, matches the certified weight ticket that claimant provided. Although claimant obtained a quote for a lesser amount, that quote was based upon the shipment of twenty-three cubic meters of goods. The weight tickets show that claimant shipped seven crates of goods that comprised a total of forty-four cubic meters. Claimant has not provided any additional evidence regarding the amount the agency should have paid for the shipment of his goods, so the Board has no basis upon which to overturn the amount upon which the taxes were calculated. *See Benjamin A. Hanfelder*, CBCA 1294-RELO, 08-2 BCA ¶ 33,987 (burden on claimant to prove all elements of claim in a relocation case).

Decision

We uphold USACE's demand for repayment of FICA and Medicare taxes and remand this claim to the agency to determine the amount of FIWT.

Marian E. Sullivan

MARIAN E. SULLIVAN

Board Judge