



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

June 5, 2019

CBCA 6379-RELO

In the Matter of DALTON M. COKER

Dalton M. Coker, White City, OR, Claimant.

Larry R. Booker, Chief, PCS Travel Section, Financial Services Center, Department of Veterans Affairs, Austin, TX, appearing for Department of Veterans Affairs.

CHADWICK, Board Judge.

Dalton M. Coker works for the Department of Veterans Affairs (VA) at the Southern Oregon Rehabilitation Center and Clinics (SORCC). In October 2018, Mr. Coker asked the Board to review his claim for additional reimbursement for moving costs incident to a transfer. In November 2018, we dismissed the matter, noting that Mr. Coker and VA “agree that the claimant belongs to a collective bargaining unit” and, further, that “[o]ur review of the collective bargaining agreement confirms that it contains an exclusive grievance procedure with no exceptions for travel or relocation disputes.” *Dalton M. Coker*, CBCA 6296-RELO (Nov. 29, 2018) (citing *David P. Meyer*, CBCA 6097-TRAV, 18-1 BCA ¶ 37,081); *see also* 5 U.S.C. § 7121(a)(1) (2012) (grievance procedures in a collective bargaining agreement “shall be the exclusive administrative procedures for resolving grievances which fall within its coverage,” with exceptions not relevant here).

In February 2019, Mr. Coker refiled the same claim with the Board, stating, “After speaking with the union and the lawyers they told me that the union doesn’t handle PCS [permanent change of station] disputes so it is still the jurisdiction of this [Board].” Because Board Rule 407 (48 CFR 6104.407 (2018)) gave Mr. Coker thirty days to ask us to reconsider our dismissal of his claim, his February 2019 filing was too late (even if we subtract the period of the partial government shutdown), and our dismissal was already final.

We did not summarily deny reconsideration, however, because correspondence from a union official and from the SORCC director that Mr. Coker attached to his February 2019 claim gave us pause, as the correspondence suggests that the union and, perhaps to a lesser extent, VA both misconstrue the function of collectively bargained grievance procedures in resolving travel and relocation reimbursement claims. This decision explains our concerns.

In February 2019, the president of Mr. Coker's American Federation of Government Employees (AFGE) local emailed him: "The reason we cannot help [you] with [your] CPS [sic] reimbursement is because entitlement to CPS [sic] does not come from VA. The VA is the only party to our (AFGE) Master Agreement. . . . Since the CPS [sic] program and [sic] different entity than the VA has its own appeals process, [you] will have to use that."

This advice was grossly incorrect. Assuming that "CPS" was simply a misspelling of "PCS," a permanent change of station is not a "program" or a "different entity from the VA." PCS is a type of transfer that may be reimbursable by an agency under 5 U.S.C. § 5742a and the regulations implementing that statute. *See, e.g., Eddie H. Ball*, CBCA 5842-RELO, 18-1 BCA ¶ 36,957. Where a collective bargaining agreement broadly covers terms and conditions of employment and does not exclude travel or relocation reimbursement disputes from the grievance process, there is no separate "appeals process" for those claims. *See Tiffany M. Washington*, CBCA 4879-RELO, 16-1 BCA ¶ 36,280. The grievance procedures must be used "exclusive[ly]." 5 U.S.C. § 7121(a)(1). The current VA/AFGE master agreement (March 2011) is such an agreement. Article 1 of that agreement states that AFGE represents the employees in the bargaining unit in "all matters affecting personnel policies, practices, or working conditions," and the grievance procedure in article 43 covers "any matter relating to employment," with enumerated exclusions not relevant here.

Notwithstanding his email, the union local president submitted Mr. Coker's claim to the SORCC director as a written grievance in March 2019. The director denied the grievance by undated letter. We would be inclined to leave the matter there, except that the stated basis of the director's decision gives us further concern as to whether the grievance process was fully implemented. The director wrote that "it has been determined that" Mr. Coker's claim for additional relocation reimbursement "is outside the VA SORCC's control. Because the decision made is based on VA Travel Regulation § 302-7.16 I do not have the authority to change this ruling." Unfortunately, this can be read in two ways. It could mean that the director concluded that VA's original denial of the claim was correct under the applicable regulations. (We express no opinion on that merits issue.) Alternatively—and this reading concerns us because it sounds a bit like the earlier email from the union—one could read the decision as saying that, whenever the travel or relocation regulations apply, an official acting on a union grievance lacks "authority to change" VA's decision, even if it is wrong. That cannot be correct; otherwise, the negotiated right to grieve such disputes would be illusory.

It is not this Board's statutory role to comment on matters within the scope of federal employees' collective bargaining agreements, and ordinarily we are careful not to do so. We made an exception here because Mr. Coker seemed to find himself in a "Catch-22." We told him last year (at VA's urging) that we cannot decide his reimbursement claim because it is a union matter. He then contacted AFGE—which at least initially sent him back to us. Mr. Coker refiled his claim here, but then, the union submitted a grievance for him. Now, the VA deciding official's letter does not make clear whether anyone has to this day reviewed the claim on the merits, rather than denying "authority" to do so. Mr. Coker deserved better and clearer guidance both from his union and from VA.

Decision

We properly dismissed Mr. Coker's claim last year, and we must do so again, for the same reason, and because Mr. Coker sought reconsideration of our decision too late under our rules. We lack authority to decide whether VA correctly applied the applicable regulations in refusing to reimburse some of Mr. Coker's moving expenses. We can only urge everyone involved at VA and AFGE to (1) clarify to Mr. Coker that his claim either has received, or will receive the full consideration that is due to it under the union's negotiated grievance procedures, and (2) be clearer in the future about why an employee's claim is denied in a grievance proceeding, whether on the merits or for lack of authority.

Kyle Chadwick

KYLE CHADWICK
Board Judge