



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

May 24, 2022

CBCA 7312-RELO

In the Matter of DAVID H.

David H., Claimant.

Emily R. Irvin, Office of General Counsel, National Geospatial-Intelligence Agency, Springfield, VA, appearing for National Geospatial-Intelligence Agency.

DRUMMOND, Board Judge.

A federal employee seeks reimbursement of temporary quarters subsistence expenses (TQSE) incurred after he received an offer of employment but before he received formal travel orders. Because the “administrative intent” exception does not apply to TQSE expenses and because the agency’s decision was not arbitrary, capricious, or contrary to law, the claim is denied.

Background

In September 2020, the agency issued claimant a tentative offer of employment as a land weapons analyst via automated and personalized email. The transition date was tentatively scheduled for December 6, 2020.

Claimant received a formal permanent change of station (PCS) order from the agency on October 22, 2020. Claimant sought reimbursement from the agency for TQSE incurred starting September 26, 2020. The agency denied claimant’s request for all TQSE incurred prior to October 22, 2020, stating that it had previously advised claimant that “any expense you incur before receiving your signed orders will not be reimbursable to you.”

Claimant appealed the agency’s denial to this Board.

Discussion

Claimant argues that he should be reimbursed for TQSE incurred before he received his travel orders. According to the claimant, although the general rule is that an employee should not incur PCS expenses prior to receiving a written order, the “administrative intent” exception to this general rule should apply. Because the “administrative intent” exception does not apply to TQSE, the claim is denied.

The Joint Travel Regulations (JTR) provide that “[a]n appointee or civilian employee should not incur PCS expenses before receiving the written order. Expenses incurred before receipt of a written or verbal order are not reimbursable unless the DoD Agency has provided a clear ‘administrative intent’ to transfer the civilian employee when costs are incurred and subsequently issues orders authorizing reimbursement.” JTR 053701 (Sept. 2020). The “administrative intent” exception derived from this provision does not apply to TQSE. The JTR specifically provides that TQSE is a “discretionary, not mandatory, allowance unless a civilian employee returns from a foreign area through the DoD Priority Placement Program (PPP).” JTR 0542. The JTR also differentiates between TQSE and expenses to which an employee may be entitled:

The authorized allowances are transportation for the civilian employee and dependent, per diem for the civilian employee and dependent, miscellaneous reimbursable expenses, [miscellaneous expense allowance], real estate, [household goods] transportation and storage, and the [relocation income tax] allowance. The Agency may not negotiate, deny, or reduce these allowances when the civilian employee meets the eligibility requirements. The [house-hunting trip], TQSE, property management services, and transportation allowances for [privately owned vehicle] shipment are discretionary.

JTR 0536.

The Board has consistently held that reimbursement of TQSE rests squarely within the discretion of the agency. *See Ruben M.*, CBCA 7161-RELO, 21-1 BCA ¶ 37,971; *Christopher S.*, CBCA 6756-RELO, 21-1 BCA ¶ 37,778; *Scott T. Downey*, CBCA 6777-RELO, 20-1 BCA ¶ 37,621; *Michael P. Voich*, CBCA 6635-RELO, 20-1 BCA ¶ 37,595. The Board will not overturn an agency decision unless it is arbitrary, capricious, or contrary to law. *Christopher S.* (citing *Donald E. Coney*, CBCA 702-RELO, 07-2 BCA ¶ 33,605). To determine whether the agency has abused its discretion in denying requests for extension of the TQSE period, the Board considers whether an agency is consistent in its treatment of such requests. *Melinda Salmon*, GSBCE 15832-RELO, 02-2 BCA ¶ 31,965. This Board has previously approved the denial of TQSE where the employee did not receive

authorization prior to incurring such expenses. *See Walter C. Moynihan*, CBCA 6083-RELO, 18-1 BCA ¶ 37,093; *Sam Tyson, Jr.*, CBCA 2311-RELO, 11-1 BCA ¶ 34,745.

The agency partially denied claimant's request for TQSE because claimant incurred the expenses before he received his travel orders. The agency indicated that authorization to begin incurring such expenses before receipt of a written order is only given in unusual or urgent situations and that claimant does not fit into that category. Prior to claimant incurring the expenses for which he seeks reimbursement, the agency repeatedly advised claimant that any expenses he incurred prior to receiving his signed orders would not be reimbursable. Further, the agency determined that claimant incurred the costs incident to his previously planned relocation for retirement rather than due to his selection for the position.

Utilizing its discretion, the agency partially denied claimant's TQSE request, and this partial denial was not arbitrary, capricious, or contrary to law.

Decision

For the foregoing reasons, the Board affirms the agency's decision and denies the claim for additional TQSE.

Jerome M. Drummond
JEROME M. DRUMMOND
Board Judge