



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

March 24, 2008

CBCA 987-RELO

In the Matter of RICHARD G. BEBOUT

Richard G. Bebout, Alamogordo, NM, Claimant.

Judy Hughes, Standards and Compliance, Finance Mission Area-Travel Pay, Defense Finance and Accounting Service, Columbus, OH, appearing for Department of the Army.

McCANN, Board Judge.

Mr. Bebout has asked this Board to review the denial of his claim for temporary quarters subsistence expenses (TQSE) and a miscellaneous expense allowance (ME) . On August 10, 2007, the United States Army White Sands Missile Range (WSMR) issued a travel authorization to Mr. Bebout to travel from his home in Clinton, Utah, to the WSMR, New Mexico, to report to his first official duty station as a government employee. Mr. Bebout was not a government employee when the travel authorization was issued. These orders authorized TQSE and ME. On September 6, 2007, after traveling to New Mexico, Mr. Bebout's travel orders were changed and the authorization for TQSE and ME was removed.

The Defense Finance and Accounting Service (DFAS) denied Mr. Bebout's claim for reimbursement of TQSE and ME on the grounds that the Joint Travel Regulations (JTR) do not permit TQSE and ME to first-time employees. DFAS explained in its letter of January 7, 2008, that Mr. Bebout's original orders were issued in error and that such erroneous orders do not entitle him to reimbursement.

Discussion

It is unfortunate that WSMR issued orders that purportedly authorized reimbursement for TQSE and ME. Clearly it did Mr. Bebout a disservice by doing so. However, DFAS is correct that Mr. Bebout's claim must be denied. A new employee to federal service is entitled by statute to certain benefits when he moves from his residence at the time of appointment to his first duty station. 5 U.S.C. §§ 5722, 5723 (2000). These benefits are similar to those provided to an employee when an agency transfers him from one duty station to another in the interest of the Government, 5 U.S.C. §§ 5724, 5724a, but they are not identical. Agencies are authorized to reimburse the travel and transportation expenses of a new appointee and his or her immediate family, the transportation and temporary storage expenses of household goods and personal effects, and the cost of shipping a privately owned motor vehicle from the place of residence at the time of selection to the initial duty station. 5 U.S.C. § 5723. The Federal Travel Regulation similarly provides for payment of the foregoing expenses and makes clear that other expenses, including TQSE and ME, may not be reimbursed for new appointees. 41 CFR 302-3.2 (2007). These regulations have the force and effect of law. The JTR is to the same effect. JTR C5080-B.

The fact that Mr. Bebout's travel orders erroneously authorized reimbursement of TQSE and ME did not create a contractual right to reimbursement. In similar situations, we have consistently followed the Supreme Court's direction that the Government cannot be held to its representatives' promises when they are contrary to law. Subjecting the Government to estoppel in these circumstances would allow it to spend money in ways which have been forbidden by Congress. *E.g., Louise C. Masse*, GSBCA 15684-RELO, 02-1 BCA ¶ 31,694 (2001) (citing *Office of Personnel Management v. Richmond*, 496 U.S. 414 (1990); *Federal Crop Insurance Corp. v. Merrill*, 322 U.S. 380 (1947)). It is well established that travel orders which erroneously authorize relocation expenses to which a new employee is not entitled cannot create a right to reimbursement in excess of the statutory and regulatory entitlements. *Kevin R. Kimiak*, GSBCA 16641-RELO, 05-2 BCA ¶ 33,007; *Wendy Castineira*, GSBCA 15092-RELO, 00-1 BCA ¶ 30,740 (1999); *William Archilla*, GSBCA 13878-RELO, 97-1 BCA ¶ 28,799. This is true regardless of whether the employee relied to his or her detriment on the erroneous orders. *Marlene Lewis*, GSBCA 15431-RELO, 01-2 BCA ¶ 31,642; *Kimiak*; *Castineira*; *Archilla*.

Decision

DFAS correctly applied the law in deciding that Mr. Bebout's claim should not be paid. The claim is thus denied.

R. ANTHONY McCANN
Board Judge