



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

July 26, 2012

CBCA 2656-RELO

In the Matter of JESSICA M. KOLDOFF

Jessica M. Koldoff, Brownsville, TX, Claimant.

James E. Hicks, Office of Chief Counsel, Drug Enforcement Administration, Department of Justice, Springfield, VA, appearing for Department of Justice.

McCANN, Board Judge.

Claimant, Jessica M. Koldoff, a research specialist with the Drug Enforcement Administration (DEA), was transferred under permanent change of station (PCS) orders. The DEA denied her claim for pre-departure expenses, and she has asked this Board to settle the claim. We deny the claim.

Background

Claimant was transferred from DEA headquarters in Arlington, Virginia (near Washington, D.C.), to Mexico City, Mexico. Her reporting date was October 23, 2011. Her travel authorization granted her up to ten days of pre-departure temporary quarters (TQ) for use prior to departing for the new duty station. On September 26, 2011, claimant left her duty station in Arlington and traveled to Phoenix, Arizona. On October 22, 2011, she departed Phoenix for Mexico City.

Claimant filed a travel voucher on October 31, 2011, claiming expenses for eight nights of pre-departure TQ while traveling to Phoenix and for her flight and baggage costs to Mexico City. This claim was denied as not being in accordance with her PCS authorization. She filed another voucher claiming only her flight from Phoenix to Mexico City and baggage costs. That claim was granted. Claimant appealed the denial of her claimed expenses for pre-departure TQ to the agency, and the agency denied her appeal.

Over a year prior to her reporting date, claimant was informed that she would be assigned to a transportation management specialist who would, among other things, provide a PCS counseling session to discuss entitlements prior to claimant's move. Claimant was also advised to become familiar with the PCS Foreign Assignment Relocation Handbook (handbook). Claimant received the counseling session and subsequently asked if it would be possible to fly to Mexico from Phoenix, rather than from Washington, D.C., so that she could spend her birthday with her family in Phoenix. Claimant was told that she could fly from Phoenix rather than from Washington but that she would be entitled to reimbursement for the lesser of the cost of the flight to Mexico from Washington or from Phoenix.

In her travel voucher, claimant claimed pre-departure expenses for hotels and meals for eight days en route to Phoenix. The agency denied these expenses because claimant had already departed Arlington, Virginia. Thus, according to the agency, the claimed expenses were not pre-departure expenses but were, instead, en route expenses. Accordingly, the agency indicated that the claimed costs were not reimbursable as pre-departure expenses.

Claimant alleges that she was told that she could take her pre-departure TQ anywhere and that she could fly from Phoenix. She claims that she was never told that she could not take pre-departure TQ after departing Washington, D.C. The agency disputes this. The agency contends that in the foreign orientation program, which she attended, she was told that pre-departure TQ can be taken anywhere in the United States as long as the employee departs from his/her old U.S. duty station. It also contends that she was advised to read the handbook, which is also clear on this point.

Discussion

Statute authorizes an agency to pay "the travel expenses of an employee transferred in the interest of the Government from one official station or agency to another for permanent duty." 5 U.S.C. § 5724(a)(1) (2006). Under the Federal Travel Regulation (FTR), an employee:

may be entitled to the following under the Department of State Standardized Regulations (DSSR) (Government Civilians-Foreign Areas): (a) A foreign transfer allowance (FTA) for quarters occupied temporarily before departure from the 50 States or the District of Columbia for an official station in a foreign area incident to a permanent change of station and travel to first official station overseas.

41 CFR 302-3.101 (2011). The DSSR provides for "a pre-departure subsistence expense ... in temporary quarters for employee and each member of his family for up to 10 days before

final departure from a post in the United States to a post in a foreign area, beginning not more than 30 days after they have vacated residence quarters.” DSSR 241.2(c). The DSSR further indicates that the “ten days may be anywhere in the U.S. . . . as long as employee or family members have not begun travel on orders and final departure is from the U.S. post of assignment.” DSSR 242.39(c). Furthermore, the handbook, which was recommended to claimant, states that an employee transferring to a foreign post of duty will be authorized reimbursement for expenses incurred in up to ten days pre-departure quarters as long as he/she has not begun en route travel and final departure is from his/her U.S. duty station.

Claimant maintains that she was unaware that her lodging and meal expenses en route to Phoenix would not qualify as pre-departure TQ, and was led to believe that it would qualify. It appears, however, that claimant was told that such expenses would not qualify, or, at the very least, she seems to have had ample opportunity to familiarize herself with the regulations to ascertain that such expenses would not be reimbursed unless taken before she departed her duty station for the last time. Regardless of whether she knew or not, the regulations simply do not allow for such reimbursement here. It is well-established that the “Government may not spend money in violation of statute or regulation.” *Kevin S. Foster*, GSBGA 13639-RELO, 97-1 BCA ¶ 28,688 (1996) (citing *Office of Personnel Management v. Richmond*, 496 U.S. 414 (1990); *Federal Crop Insurance Corp. v. Merrill*, 332 U.S. 380 (1947)). The regulations that pertain here are clear. An employee may be reimbursed for expenses of pre-departure TQ only if the TQ occurred prior to departing his/her old duty station. Claimant departed her old duty station in Arlington on September 26, 2011, and traveled to Phoenix. She never returned to Arlington. Accordingly, the expenses that she incurred en route to Phoenix were not pre-departure expenses, but rather, were post-departure expenses. Thus, claimant is not entitled to reimbursement of the claimed expenses as pre-departure TQ.

Decision

The claim is denied.

R. ANTHONY McCANN
Board Judge