



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

January 7, 2010

CBCA 1611-RELO

In the Matter of STEPHEN WEISS

Stephen Weiss, Cottonwood Heights, UT, Claimant.

Michael L. Waschek, Civilian Personnel Officer, Department of the Air Force, APO Area Europe, appearing for Department of the Air Force.

DRUMMOND, Board Judge.

Stephen Weiss, a civilian employee of the Department of Air Force, accepted a one year unaccompanied transfer from Utah to Kuwait, reporting to his new post in Kuwait City on November 6, 2008. His travel orders did not authorize travel for his dependents or a separate maintenance allowance. Shortly after arriving at his new post, Mr. Weiss completed an application for the first time seeking a separate maintenance allowance for his wife and teenage stepdaughter. In support for his request, he referred to his wife's career as a nurse and board of director responsibilities for a family business. He also stated that his wife would not consent to his stepdaughter leaving school in Utah to come to Kuwait.

The agency rejected his claim, concluding that no compelling reasons existed since he had voluntarily accepted the transfer as unaccompanied with the intent of his family remaining in the United States the entire time. Mr. Weiss disputes the agency's determination. He argues that no weight was given to his special needs and hardship which necessitated separate households for himself and his family at the time of his assignment to Kuwait.

Under the statute and implementing regulations, an employee is not automatically entitled to receipt of a separate maintenance allowance. If the agency determines that there is a compelling reason for the employee to maintain family members elsewhere than at his post of duty in a foreign area, it may authorize a separate maintenance allowance. 5 U.S.C. § 5924 (2006); *Charles F. Baines*, B-252000 (Aug. 30, 1993). Under the statute and implementing regulations, the special needs or hardship of the employee or family members may be considered by the agency in determining if a compelling reason exists. 5 U.S.C. § 5924(3); Department of State Standardized Regulations (DSSR) §§ 261.2, 262.

The burden is on the claimant to establish the liability of the Government. 5 U.S.C. § 5924. The Board will not overturn an agency's determination to approve or deny a separate maintenance allowance unless the Board finds the determination to be arbitrary, capricious, or contrary to law. Here the agency reasonably determined that Mr. Weiss' alleged compelling circumstances do not apply since he voluntarily accepted the transfer as unaccompanied with the intent of his family remaining in the United States during his entire tour. Because Mr. Weiss has not demonstrated that the determination was arbitrary, capricious, or contrary to law, the Board finds no basis for reversing the agency's determination.

Decision

The claim is denied.

JEROME M. DRUMMOND
Board Judge