



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

March 10, 2011

CBCA 2117-RELO

In the Matter of KENNETH T. JONES

Kenneth T. Jones, Decatur, GA, Claimant.

Julie A. Sammons, Office of the General Counsel, Department of Health and Human Services, Atlanta, GA, appearing for Department of Health and Human Services.

GOODMAN, Board Judge.

Claimant, Kenneth T. Jones, an employee of the Department of Health and Human Services, has submitted a claim to this Board seeking reimbursement of various costs incurred while he was assigned to training in New York pursuant to the Government Employee Training Act (GETA). The agency asserts the Board does not have jurisdiction over a portion of the claim because claimant has not submitted that portion of the claim to the agency for an initial adjudication. The agency further asserts that the remainder of the claim was encompassed within a dispute submitted by claimant as an equal employment opportunity (EEO) claim in 2009 and settled thereafter by alternative dispute resolution (ADR).

Factual Background

Claimant has filed this case, stating the following claim:

I am seeking previously authorized per diem payments from March 1, 2009 to August 17, 2010. However, if the subsequent change of duty station constitutes a temporary change of duty station under GETA, considering I paid back relocation expenses, I am seeking repayment of any relocation monies withheld from TDY [temporary duty] payments and repayment, or monetary compensation, of appropriate entitlements under a GETA relocation and

temporary change of station relocation that I would have ordinarily been entitled. Additionally, I am seeking the already paid TDY payments as compensatory damages and interest.

This claim arose from the following circumstances. Claimant participated in the agency's Long Term Training Program under GETA from August 2008 to August 2010, and moved from his duty station in Atlanta, Georgia, to attend Columbia University in New York, New York, to participate in the program. The agency approved claimant for two travel authorizations - limited relocation allowances and TDY allowances. However, the agency asserts that the Federal Travel Regulation (FTR) allowed one of these entitlements, but not both. 41 CFR 302-3.101 fbl. I note (2008).

Claimant received relocation and per diem expenses between August 2008 and February 2009. In February 2009 the agency realized its alleged error and notified claimant that payments for both relocation and per diem were not permitted. The agency allowed claimant to choose to repay either the relocation benefits or the TDY benefits. Claimant chose to repay the relocation benefits. Deductions were made from his pending TDY payments until the amount he chose to repay was paid. On February 26, 2009, the agency changed claimant's official duty station from Atlanta to New York, where he was still engaged in long term training.

On May 20, 2009, claimant filed an EEO complaint, which was referred to ADR for possible settlement. In an ADR Request and Referral Form, the claimant summarized the dispute. Claimant and the agency engaged in ADR and entered into a Workplace Dispute Resolution Settlement Agreement (settlement agreement) in June 2009 to resolve the EEO complaint. The settlement agreement resolved costs of any kind arising out of claimant's long term training that he had incurred up to and including June 19, 2009.

Claimant states that the issues raised in this case before the Board are new claims and not related to those asserted in the EEO complaint and settled by the settlement agreement. While the proceedings of the ADR were deemed confidential, this Board has reviewed the ADR Request and Referral Form and the settlement agreement in order to resolve this case.

Claimant's training assignment in New York City ended in August 2010, and on August 16, 2010, claimant's duty station was changed to Atlanta. The agency states that a relocation authorization was approved to provide benefits for claimant's return to Atlanta, but since entering into the settlement agreement in June 2009, claimant has not asserted or otherwise made any claim on travel or relocation issues for adjudication by the agency.

On August 24, 2010, claimant filed this case with the Board. The agency asserts that the Board does not have jurisdiction over the portion of the claim with regard to costs incurred between June 20, 2009, and August 17, 2010, because claimant has not submitted the claim to the agency for an initial adjudication. The agency further asserts that with regard to costs incurred prior to and including June 19, 2009, the claim for these costs was encompassed within the EEO complaint and settled thereafter by the settlement agreement.

Discussion

Board Rule 401 (48 CFR 6104.401) states in relevant part:

(c) Review of claims. Any claim for entitlement to travel or relocation expenses must first be filed with the claimant's own department or agency (the agency). The agency shall initially adjudicate the claim. A claimant disagreeing with the agency's determination may request review of the claim by the Board.

The portion of claimant's claim seeking per diem payments from June 20, 2009, to August 17, 2010, is not ripe for this Board's review as it has not been presented to the agency for initial adjudication. Accordingly, as this portion of the claim does not fulfill the requirements of Board Rule 401(c), we dismiss this portion of the claim for lack of jurisdiction.

With regard to the claims that arose prior to and including June 19, 2009, it is clear from claimant's description of the dispute submitted in the ADR Referral Form for the EEO complaint and the terms of the settlement agreement that these claims have been settled. Accordingly, the Board will not review the actions of the agency that allegedly gave rise to those claims.

Decision

With regard to claimant's costs incurred prior to and including June 19, 2009, the claim is denied as previously settled. With regard to costs incurred thereafter, the claim is dismissed for lack of jurisdiction because claimant has not submitted these costs to the agency for initial adjudication.

ALLAN H. GOODMAN
Board Judge