



UNITED STATES  
CIVILIAN BOARD OF CONTRACT APPEALS

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May 31, 2016

CBCA 4846-RELO

In the Matter of CHARLES A. HINES

Charles A. Hines, Bethesda, MD, Claimant.

Kristine T. Burgos, Office of General Counsel, Department of Defense Education Activity, Alexandria, VA, appearing for Department of Defense.

**ZISCHKAU**, Board Judge.

Charles A. Hines, the claimant, challenges the determination of the Department of Defense Education Activity (DoDEA) that it is not authorized to pay Mr. Hines' permanent change of station (PCS) expenses in connection with his transfer from his DoDEA position in Okinawa, Japan, to his new position with the Department of the Navy in Bethesda, Maryland. The agency concluded that Mr. Hines was a local hire when he accepted his position in Okinawa, and that there is no statutory or regulatory authority for DoDEA to pay his PCS expenses. The claimant agrees that the Navy, as the gaining activity, is not responsible for paying his PCS expenses because the Navy did not authorize reimbursement for PCS expenses in connection with the Navy position. Although DoDEA officials previously had advised him that DoDEA would reimburse him for his PCS expenses based on the Status of Forces Agreement (SOFA) between the United States and Japan, we find no legal basis for DoDEA to reimburse Mr. Hines for his expenses. Accordingly, we deny his claim.

Background

Mr. Hines began service with DoDEA on November 19, 2009, as a local hire in Okinawa, Japan, under a two-year service agreement. He had been active duty with the Department of the Navy in Okinawa prior to that. He states that in connection with his Navy military service, he had a travel and transportation agreement that would have provided him reimbursement of his expenses of relocating back to the United States. However, he did not

make use of that benefit because he chose to remain in Okinawa to work for DoDEA. He states that the Navy authorized a one-year extension under his Navy travel and transportation agreement, but that extension expired January 31, 2011. He continued to work for DoDEA, and his service agreement was renewed for another two-year period in November 2011, and again in November 2013.

On March 19, 2015, he received notice from DoDEA that his tour of duty would not be extended upon expiration of his service agreement in November 2015 (because of the DoD policy of limiting overseas assignments to five years), and that he should begin job hunting and enter the DoD Priority Placement Program (PPP). He was enrolled in the PPP on May 19, 2015. Mr. Hines states that he was told by the DoDEA human resources chief that if he was enrolled in the PPP, he would receive reimbursement for his transfer back to the United States even if he found employment on his own. Mr. Hines states that the disadvantage of receiving a job placement through PPP is that he would not have control over the type and location of the job he would receive through that program, and he would at best receive only a lateral transfer as there was no promotion potential under PPP. Therefore, he began to actively search on his own for a position in the United States. On June 1, 2015, he received an offer of employment from the Department of the Navy, Naval Sea Systems Command (NAVSEA), Naval Surface Warfare Center, Carderock Division, in Maryland, which was a competitive appointment and a promotion, but was not secured through the DoD PPP. In addition, Mr. Hines states that the USAJOBS vacancy announcement for this new position with the Navy excluded reimbursement of PCS relocation expenses by the Navy (the gaining activity).

Mr. Hines accepted the offer from NAVSEA and had a report date of July 27, 2015. On June 10, 2015, DoDEA's acting human resources director informed Mr. Hines that DoDEA was not authorized to pay his PCS expenses for his transfer from Okinawa to Maryland, because he was a local hire for DoDEA in 2009 and he accepted the Navy position outside of the DoD PPP. This conclusion differed from the prior advice he had received from DoDEA human resource and legal representatives. Mr. Hines appealed the June 10 determination to the director of DoDEA, but that appeal was denied.

### Discussion

There is no dispute that Mr. Hines was a local hire by virtue of his retirement from the military in Okinawa and his acceptance of the civilian position with DoDEA. Mr. Hines also states that he does not have a travel and transportation allowance from DoDEA due to his being a local hire. Finally, Mr. Hines agrees that the Navy, as the gaining activity, is not authorized to pay his PCS expenses because such expenses were excluded by the vacancy announcement for his new job with the Navy. Nevertheless, he seeks PCS expenses from DoDEA, the losing activity, on the basis of the advice received from DoDEA representatives

that DoDEA would pay his travel and transportation expenses, the SOFA between the United States and Japan, and the eligibility requirements stated in 41 CFR 302-1.1(b) and (e) (2015) (FTR 302-1.1(b) and (e)).

FTR 302-1.1(b) and (e) state that individuals are generally eligible for relocation benefits if they are transferring in the interest of the Government from one permanent duty station to another which is at least fifty miles away, or if they are returning to the United States from service overseas for the purpose of separation from Government service or reassignment. Neither of these provisions authorizes DoDEA to pay Mr. Hines' PCS expenses here. Although the Navy, as the gaining activity, might have offered PCS expenses in connection with its vacancy announcement, it did not do so, and Mr. Hines recognizes that the Navy is precluded from reimbursing him for his travel and transportation expenses for the move from Okinawa to Maryland. DoDEA brought Mr. Hines on in 2009 as a local hire and Mr. Hines recognizes that he had no travel and transportation allowance or return rights from DoDEA as a result. The only exception for DoDEA to pay his travel and transportation to the United States was for Mr. Hines to accept a reassignment through the DoD PPP, but he chose not to do so. We have held that a person, such as a former active duty military member, who leaves military service while outside the continental United States (OCONUS) and accepts a federal civilian position in the same OCONUS location, is a local hire and not entitled to PCS reimbursement in connection with returning to the United States. *Randy Prewitt*, CBCA 1548-RELO, 09-2 BCA ¶ 34,253; *Lisa A. Lindman*, CBCA 2893-RELO, 13-1 BCA ¶ 35,230.

Mr. Hines further argues that DoDEA is authorized to pay his PCS expenses by virtue of article IX, subpart (5) of the SOFA between the United States and Japan. Subpart (5) of article IX states:

If the status of any person brought into Japan under paragraph 1 of this Article is altered so that he would no longer be entitled to such admission, the United States authorities shall notify the Japanese authorities and shall, if such person be required by the Japanese authorities to leave Japan, assure that transportation from Japan will be provided within a reasonable time at no cost to the Government of Japan.

This SOFA provision clearly does not authorize DoDEA to pay Mr. Hines' travel and transportation expenses for his travel from Okinawa to his new duty station in the United States. Mr. Hines was brought to Okinawa as part of his military service assignment. He retired from active duty with the Navy. In November 2009, he accepted a position in Okinawa with DoDEA. There is no suggestion by Mr. Hines that he ceased to be entitled to remain in Okinawa at that time. In any event, the Navy extended his return travel benefit through January 2011, but that benefit has expired and Mr. Hines chose to remain in

Okinawa working for DoDEA into the summer of 2015. The Government of Japan did not require Mr. Hines to leave Okinawa in 2015. Rather, Mr. Hines accepted a position with the Navy in Maryland, and he moved voluntarily from Okinawa to begin his new job. Thus, this provision of SOFA has no application to Mr. Hines' request for DoDEA to reimburse his travel and transportation expenses.

Regarding Mr. Hines' argument that DoDEA officials previously advised him that DoDEA would pay his travel and transportation expenses, we have repeatedly held that an employee's reliance on erroneous information from a government official cannot serve to expand entitlements not allowed by law. *Lisa A. Lindman*, 13-1 BCA ¶ 35,230, at 172,842.

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JONATHAN D. ZISCHKAU  
Board Judge