



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

November 19, 2007

CBCA 861-RELO

In the Matter of TERRY L. CLINE

Terry M. Cline, Rockville, MD, Claimant.

Bradley R. Lindgren, Chief, Government Accounting Branch, Division of Financial Operations, Department of Health and Human Services, Rockville, MD, appearing for Department of Human Services.

DRUMMOND, Board Judge.

In January 2007, claimant, Dr. Terry L. Cline, moved from Oklahoma City, Oklahoma, to Washington, D.C., to begin his new assignment as the Administrator of the Substance Abuse and Mental Health Services Administration (SAMHSA). The travel orders SAMHSA issued to Dr. Cline authorized temporary quarters subsistence expenses (TQSE). Dr. Cline actually stayed in temporary quarters for fourteen days and incurred expenses for lodging. When he asked for reimbursement of these expenses, however, the Financial Division of the Department of Health and Human Services (the agency) refused to make payment. Dr. Cline, asserting the unfairness of the circumstances, has asks us to review the agency's determination.

The agency properly rejected this claim because Dr. Cline was a new appointee to government service. By statute, a new appointee to federal service is entitled to certain benefits when he or she moves to his or her new place of residence at the time of appointment. 5 U.S.C. §§ 5722, 5723 (2000). These benefits are similar to those provided to an employee whom an agency transfers in the interest of the Government from one duty station to another, *id.* §§ 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 costs of shipping a privately owned motor vehicle from the place of residence at the time of selection to the initial duty station. *Id.* § 5723. Similarly, the Federal Travel Regulation provides for payment of the foregoing expenses and makes clear that other expenses, including TQSE, may not be reimbursed for new appointees. 41 CFR 302-6.5 (2006).

The decisions of our predecessor in deciding federal civilian employee relocation benefit claims, the General Services Board of Contract Appeals (GSBCA), were consistent in holding that even if an agency made a commitment to reimburse a new appointee for TQSE, the commitment cannot overcome the fact that Congress has not authorized such reimbursement. *See Andrew J. Marks*, CBCA 672-RELO, 07-2 BCA ¶ 33,602 (citing, in part, *David W. Brown*, GSBCA 16721-RELO, 06-1 BCA ¶ 33,147 (2005); *Rosemary Schultz*, GSBCA 16703-RELO, 05-2 BCA ¶ 33,107).

While it is unfortunate that Dr. Cline relied to his detriment on the erroneous orders, there is no way that either this Board or the agency may right the wrong. As the GSBCA explained:

In considering claims like this one, . . . the arbiter must balance the harm the employee would suffer if the claim were denied against the damage which would result to our system of government if federal officials were free to spend money in ways which are contrary to the strictures of statute and regulation. In making this balance, the Supreme Court has clearly come down on the side of protecting our system of government. We follow the Court in holding that although [the employee] has undeniably relied to his detriment on [the agency's] promises, he may not be reimbursed because the law prevents the agency from honoring commitments made in its name by officials who do not have the power to make them.

Louise C. Mâsse, GSBCA 15684-RELO, 02-1 BCA ¶ 31,694 (2001); *Gary MacLeay*, GSBCA 15394-RELO, 01-1 BCA ¶ 31,210 (2000); *Pamela A. Mackenzie*, GSBCA 15328-RELO, 01-1 BCA ¶ 31,174 (2000) (all citing *Office of Personnel Management v. Richmond*, 496 U.S. 414 (1990); *Federal Crop Insurance Corp. v. Merrill*, 332 U.S. 380 (1947)).

JEROME M. DRUMMOND
Board Judge

