



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

January 9, 2008

CBCA 875-RELO

In the Matter of STEPHEN F. FISCHER

Stephen F. Fischer, San Diego, CA, Claimant.

Judy Hughes, Standards and Compliance, Finance Mission Area, Defense Finance and Accounting Service, Columbus, OH, appearing for Department of Defense.

KULLBERG, Board Judge.

This case addresses the question of whether an employee who is transferred in a permanent change of station (PCS) may receive storage in transit (SIT) of household goods (HHG) at government expense after the 180-day period allowed under the Federal Travel Regulation (FTR) and Joint Travel Regulations (JTR) ends. For the reasons stated below, reimbursement for SIT after 180 days is only allowed under a limited exception where an employee's PCS move also involves temporary duty (TDY) in countries such as Iraq and Afghanistan. That exception does not apply in this case, and this Board lacks the authority to allow reimbursement due to other personal circumstances.

Background

Claimant, Mr. Stephen F. Fischer, an employee of the Department of the Navy, was transferred in a permanent change of station (PCS) move from his previous place of employment at Lakehurst, New Jersey, to Naval Air Station North Island, San Diego, California. His reporting date was November 7, 2005. He was authorized a period of ninety days for SIT. He was granted an extension of an additional ninety days. That 180-day period ended on March 24, 2006, but Mr. Fischer contends that he continued to keep his household

goods in storage after that date due to delays in selling his home and various marital and health-related problems in his family. Continued storage after 180 days cost Mr. Fischer \$6500. Mr. Fischer was denied reimbursement for that storage cost by the Per Diem, Travel, and Transportation Allowance Committee (PDTATAC).

Discussion

The PDTATAC properly followed the applicable travel regulations in denying Mr. Fischer reimbursement for SIT in excess of 180 days. The FTR states the following:

Is there a time limit for the temporary storage of an authorized HHG shipment?

The initial period of temporary storage at Government expense shall not exceed 90 days in connection with any authorized HHG shipment. The HHG may be placed in temporary storage at origin, in transit, at destination, or any combination thereof. However, upon your written request, an additional 90 days may be authorized by the designated agency official. In no case may the maximum time limit for temporary storage exceed 180 days.

41 CFR 302-7.8 (2005) (FTR 302-7.8). The Joint Travel Regulations (JTR), which are also applicable, provide the following:

SIT (in connection with authorized HHG transportation) should not exceed 90 days unless the employee requests (in writing) an additional period, [not to exceed] 90 days, that is authorized/approved by a Service/Defense Agency designated official. If no additional storage is authorized/approved, the employee is financially responsible for the additional storage expense (FTR § 302-7.8).

JTR C5190-B.1. The only exception under the JTR that allows reimbursement for SIT beyond the 180-day maximum is for “employees on a PCS to a new PDS with en route TDY assignments to locations such as Iraq and Afghanistan.” *Id.* C5191. Mr. Fischer’s PCS move did not involve those circumstances, and consequently, his reimbursement is limited to SIT for no more than 180 days.

Mr. Fischer argues that the Board should waive the restrictions on reimbursement for more than 180 days of SIT because his agency supports his request, and it has the funds to

reimburse him due to the “uncontrollable” events related to his relocation. The General Services Administration Board of Contract Appeals, which previously decided these relocation claims, recognized the following:

[A]n agency may not confer power upon itself. It literally has no power to act . . . unless and until Congress confers power upon it Allowing an agency to make a payment for a purpose not authorized by statute or regulation, . . . would violate the Appropriations Clause of the Constitution. U.S. Const. art. I, § 9, cl. 7 (“No money shall be drawn from the Treasury but in Consequence of Appropriations made by Law.”).

Gary MacLeay, GSBICA 15394-RELO, 01-1 BCA ¶ 31,210, at 154,079 (2000). This Board’s authority to reimburse relocation costs “is grounded in subchapter II of chapter 57 of title 5, United States Code, and the regulations issued by the Administrator of General Services (under express Congressional charge) to implement that statute.” *Teresa M. Erickson*, GSBICA 15210-RELO, 00-1 BCA ¶ 30,900, at 152,473. “Those regulations have the force of law and must be followed.” *Id.* Our authority extends no further. *See Edward B. Giagni*, GSBICA 16972-RELO, 07-1 BCA ¶ 33,476 (2006). Regardless of whether officials within Mr. Fischer’s agency would allow reimbursement and have the funds to do so, this Board can only permit reimbursement for those amounts allowed under applicable statutes and regulations.

Decision

Mr. Fischer’s claim is denied.

H. CHUCK KULLBERG
Board Judge