



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

June 26, 2008

CBCA 1067-TRAV

In the Matter of RICHARD J. MAILLET

Richard J. Maillet, FPO, Area Pacific, Claimant.

M. J. Luken, Staff Judge Advocate, Logistics Group Western Pacific, Department of the Navy, FPO, Area Pacific, appearing for Department of the Navy.

WALTERS, Board Judge.

Claimant, Richard J. Maillet, has requested that the Board review the decision of Commander, Logistics Group Western Pacific (COMLOG WESTPAC), which denied Maillet's claim for reimbursement of a funded environmental and morale leave (FEML) that Maillet took one month after resigning from COMLOG WESTPAC. For the reasons explained below, we affirm the agency's decision.

Background

By statute, civilian employees are entitled to reimbursement for rest and recuperation travel from designated locations abroad to (1) "other locations having different social, climatic, or other environmental conditions than those at the post," or (2) "locations in the United States." 10 U.S.C. § 1599b(b) (2000); 22 U.S.C.A. § 4081(6) (2004). Under the Joint Travel Regulations (JTR), this "rest and recuperation travel" is memorialized as FEML. JTR C6700.¹ The JTR, which apply Department of Defense civilian employees, provide that

¹ The JTR citations herein are to the version of the JTR in effect at the time in question when the claimant alleges he earned FEMLs. The location of these provisions under the current version of the JTR is JTR C7700.

an employee is allowed one FEML for a tour of at least twenty-four months and two FEMLs for tours of thirty-six months. JTR C6700-C.1.a. Unless waived, the travel may not be performed within six months of the beginning or end of the tour. JTR C6700-C.2.

In May 2004, claimant, Richard J. Maillet, was assigned to COMLOG WESTPAC, based in Singapore, on a thirty-six-month tour. Maillet, therefore, had been entitled to two FEMLs for his COMLOG WESTPAC tour. In October 2006, Maillet submitted and was granted a waiver from the limitation against using his second FEML within six months of the end of that tour and was planning to take that FEML in December 2006. However, in November 2006, approximately six months before his tour was to be completed, Maillet resigned from COMLOG WESTPAC and joined the U.S. Naval Criminal Investigative Service (NCIS), on a thirty-six-month tour also based in Singapore. Maillet acknowledges that, after reporting to NCIS, he was informed that COMLOG WESTPAC would no longer fund the FEML that he had planned. In December 2006, just a month after joining NCIS, with NCIS' permission, Maillet used FEML to travel to the United States and had been reimbursed for his associated travel costs by NCIS. In December 2007, Maillet was informed that the December 2006 travel would count as one of the two FEMLs entitled to him as part of his current three-year tour with NCIS. Maillet asserts that the December 2006 trip should be considered FEML associated with his prior employer, COMLOG WESTPAC, and therefore, he has two remaining FEMLs with NCIS. The Government counters that, even though COMLOG WESTPAC had granted Maillet a waiver of the six-month period restriction for purposes of taking his second FEML in December 2006, he effectively abandoned his right to the travel benefit, because he left COMLOG WESTPAC prior to completion of his thirty-six-month tour with that agency.

Discussion

COMLOG WESTPAC raises an initial question regarding the Board's subject matter jurisdiction over FEMLs, arguing that all matters relating to compensation and leave of federal personnel are within the sole administrative purview of the Office of Personnel Management (OPM). By statute, the Administrator of the General Services Administration (GSA) has jurisdiction to settle travel and relocation claims for: (1) expenses incurred by federal civilian employees for official travel and transportation and (2) relocation expenses incident to transfers of official duty station. 31 U.S.C. § 3702 (a)(3) (2000). This jurisdiction has been delegated by the GSA Administrator to this Board. The Board has not previously considered a claim involving FEML. Nevertheless, one of the Board's predecessors, the GSA Board of Contract Appeals (GSBCA) routinely assumed jurisdiction over and decided cases involving renewal agreement travel (RAT) which, like FEML, is a type of official government-funded travel authorized for federal employees stationed overseas. *E.g., Joe E. Masters*, GSBCA 15908-TRAV, 03-1 BCA ¶ 32,229. With respect to both RAT and FEML,

employees use their accrued annual leave for travel and that travel is funded by the government in recognition of benefits realized by the government in retaining the services of valuable personnel. The issue presented by Maillet's claim does not revolve around the accrual or use of his annual leave, which would lie solely within the jurisdictional ambit of OPM. *Hank Thompson*, GSBCA 15510-RELO, 01-1 BCA ¶ 31,370. Rather, the issue to be resolved here is whether Maillet is entitled under the JTR to travel cost reimbursement from COMLOG WESTPAC for FEML travel taken after leaving that agency while in the employ of NCIS. This clearly is an issue within this Board's subject matter jurisdiction.

As to the merits of the claim, Maillet has not shown where either COMLOG WESTPAC or NCIS failed to adhere to the regulations. As noted above, the JTR stipulates that, to be eligible for two FEML trips on a given tour, the employee's tour length must be a minimum of thirty-six months. JTR C6700-C.1.a. Because Maillet elected to cut short his tour with COMLOG WESTPAC before completing thirty-six months with that agency, he effectively forfeited entitlement to the second FEML for his tour with COMLOG WESTPAC.

Decision

The agency determination is affirmed and the claim is denied.

RICHARD C. WALTERS
Board Judge