



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

August 26, 2013

CBCA 3230-RELO

In the Matter of GLENDA F. WALL and MARIA E. DIX

Glenda F. Wall and Maria E. Dix, APO Area Europe, Claimants.

Maurice Sims, Chief, PCS Processing Unit, Headquarters, Air Force Personnel Center, Randolph Air Force Base, TX, appearing for Department of the Air Force.

STERN, Board Judge.

Claimants sought to exercise their return rights to their prior duty station upon completion of their overseas assignments. The United States Air Force (Air Force) seeks an advance decision, pursuant to 31 U.S.C. § 3529 (2006), as to whether claimants are entitled only to reimbursement for return travel and transportation, or whether claimants are entitled also to relocation benefits, including real estate and temporary quarters subsistence expenses (TQSE).

Discussion

Statute specifically permits the payment of travel and transportation expenses of employees returning to the continental United States from overseas assignments. 5 U.S.C. § 5722(a)(2). Payment of relocation benefits, however, requires that an agency make a determination regarding the reason for the transfer back to the United States. Statute requires the payment of certain real estate expenses of an employee who is transferred in the interest of the Government from a post outside the United States to one within the United States. 5 U.S.C. § 5724a(d)(2). TQSE may also be paid in this circumstance. 5 U.S.C. § 5724a(c); 41 CFR 302-6.4 (2012). Where, however, the transfer is deemed to be for the benefit of the

employee, these benefits are not payable.

Our predecessor board in deciding these matters stated,

When an employee is transferred from one permanent duty station to another, the transfer usually benefits both the Government and the employee. For the purpose of determining whether the employee may receive relocation benefits, however, the transfer must be characterized as for the principal advantage of one or the other; it is either “in the interest of the Government” or “primarily for the convenience or benefit of an employee.” If the primary beneficiary is the Government, the employee is entitled to receive certain benefits and may, in the agency’s discretion, receive others (all subject to regulatory constraints). If the primary beneficiary is the employee, on the other hand, none of these expenses may be paid from Government funds.

Janice F. Stuart, GSBCA 16596-RELO, 05-1 BCA ¶ 32,960. An agency’s determination as to whether a transfer primarily benefits the employee or the Government is discretionary and is a decision that we will not overturn unless it is arbitrary, capricious, or clearly erroneous. *Timothy A. Burgess*, GSBCA 16725-RELO, 05-2 BCA ¶ 33,103; *Marco A. Endara*, GSBCA 16524-RELO, 05-1 BCA ¶ 32,883. Thus, relocation benefits may be reimbursed where an employee returns to the United States from an overseas assignment to accept a position deemed by the agency to be for the benefit of the Government. *Dennis L. Brink*, CBCA 2871-RELO, 13 BCA ¶ 35,231.

Where, however, an employee exercises his return rights to come back to the United States from an overseas assignment for separation from Government service or retirement, the transfer is for the benefit of the employee and relocation benefits may not be paid. *Janice F. Stuart*; *William D. Dooley*, GSBCA 16107-RELO, 04-1 BCA ¶ 32,451 (2003); *Jackie Leverette*, GSBCA 15806-RELO, 03-1 BCA ¶ 32,119 (2002).

Decision

Board Rule 502 (48 CFR 6105.502 (2012)) implements the statute granting the Board the authority to issue advance decisions. That rule provides,

- (1) A disbursing or certifying official of an agency, or the head of an agency, may request from the Board a decision (referred to as a “Section 3529 decision”) on a question involving a payment the disbursing official or head of agency will make, or a voucher presented to a certifying official for certification, which concerns the following type of claim made against the

United States by a federal civilian employee:

- (i) A claim for reimbursement of expenses incurred while on official temporary duty travel; and
 - (ii) A claim for reimbursement of expenses incurred in connection with relocation to a new duty station.
- (2) A request for a Section 3529 decision shall be in writing; no particular form is required. The request must refer to a specific payment or voucher; it may not seek general legal advice. The request should-
- (i) Explain why the official is seeking a Section 3529 decision, rather than taking action on his or her own regarding the matter;
 - (ii) State the question presented and include citations to applicable statutes, regulations, and cases

The Air Force has not complied with this rule. The Air Force has failed to provide us with any facts regarding claimants' return to the continental United States from their overseas assignments, including information as to what specific expenses claimants seek to have reimbursed by the Air Force. The Air Force seeks general legal advice. We have no jurisdiction to provide such counsel. The matter is hereby returned to the Air Force.



JAMES L. STERN
Board Judge