UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

February 8, 2013

CBCA 2871-RELO

In the Matter of DENNIS L. BRINK

Dennis L. Brink, Joshua, TX, Claimant.

Cheryl Holman, Chief, PCS Travel Section, Department of Veterans Affairs, Austin, TX, appearing for Department of Veterans Affairs.

POLLACK, Board Judge.

Dennis Brink, an employee of the Department of Veterans Affairs (VA), seeks $5000 for temporary quarters subsistence expenses (TQSE) associated with his return from an overseas tour in Manilla, Phillippines, to his former work station in Texas. The return from the overseas tour and transfer to a new position occurred after Mr. Brink had completed the two-year commitment of the overseas tour.

The VA denied Mr. Brink TQSE on the basis that an employee, returning or transferred back to his former station from overseas on what the VA characterizes as a reassignment, is prohibited from receiving TQSE payments in conjunction with his return from the completed assignment to the station from which he had left. The VA relies upon its understanding of *Jackie Leverette*, GSBCA 15806-RELO, 03-1 BCA ¶ 32,119 (2002), a decision by our predecessor board in deciding these matters. From *Leverette*, the VA concludes that 5 U.S.C. § 5722 (2006) precludes payment of TQSE in the instant situation. The VA misinterprets *Leverette* and the cited law. Both *Leverette* and 5 U.S.C. § 5722 concern travel and transportation costs and do not address entitlement to a relocation benefit such as TQSE for a returning employee.

TQSE reimbursement is not a travel or transportation expense. It is covered by 5 U.S.C. § 5724a(c)(1), which prescribes that an agency may pay to or on behalf of an employee who transfers in the interest of the Government

> (A) actual subsistence expenses of the employee and the employee's immediate family for a period of up to 60 days while the employee or family is occupying temporary quarters when the new official station is located within the United States; or
> (B) an amount for subsistence expenses, that may not exceed a maximum amount determined by the Administrator of General Services, instead of the actual subsistence expenses authorized in subparagraph (A) of this paragraph.

Nothing in the statute restricts TQSE payments for an employee such as Mr. Brink.

In addition, the Federal Travel Regulation at 41 CFR 302-6 (2012) provides:

> **302-6.4 Am I eligible for a TQSE allowance?**
>
> You are eligible for a TQSE allowance if you are an employee who is authorized to transfer; and
> (A) Your new official station is located within the United States; and
> (B) Your old and new official stations are 50 miles or more apart (as measured by map distance) via a usually traveled surface route.
>
> **302-6.5 Who is not eligible for TQSE allowance?**
>
> New appointees, employees assigned under the Government Employees Training Act (5 U.S.C. 4109), and employees returning from an overseas assignment for the purpose of separation are not eligible for a TQSE allowance.

Mr. Brink is neither a new employee assigned under the referenced Act nor an employee returning for purposes of separation.

Finally, the position of the VA in this case is inconsistent with other decisions by our predecessor board that allowed consideration of TQSE for returning employees. In both *Regina V. Taylor*, GSBCA 13650-RELO, 97-2 BCA ¶ 29,089 (which was decided on the basis of best interest of the Government), and *Daniel D. LaChance*, GSBCA 16911-RELO, 06-2 BCA ¶ 33,396 (which dealt with whether TQSE was mandatory), the board considered

situations where the employee was returning from overseas. In neither case did anyone raise the possibility of there being a legal prohibition.

TQSE is allowable to an employee, such as Mr. Brink, returning from overseas. Payment of TQSE is discretionary and thus we return this matter to the VA for proper exercise of its discretion.

HOWARD A. POLLACK
Board Judge