UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

February 7, 2013

CBCA 2893-RELO

In the Matter of LISA A. LINDMAN

Brad M. Bowman of The Vaughn Law Firm, LLC, Decatur, GA, appearing for Claimant.

Vonda L. Kenion, Director, Civilian Personnel Advisory Center, Office of the Deputy Chief of Staff, East Region, Department of the Army, APO Area Europe, appearing for Department of the Army.

SHERIDAN, Board Judge.

Claimant, Lisa A. Lindman, seeks eligibility for travel and transportation expenses and non-temporary storage (NTS) of her household goods (HHG). The agency takes the position that because claimant was a local hire residing in the area she is not eligible for travel and transportation expenses or NTS.

Background

In 2002, claimant moved to Stuttgart, Germany, as an employee of a private contractor, Magnum Medical Contract Company (MMCC), to provide occupational therapy services at the United States Army Health Clinic in Stuttgart. Claimant's contract with MMCC included transportation of her family and household goods and return to her home in Haltom City, Texas.

Around December 2008, claimant applied for a civilian Department of Defense (DoD) position as an occupational therapist at the clinic. The announcement for that position stated that permanent change of station (PCS) expenses were not authorized. Prior

to taking the position, claimant queried the Civilian Personnel Advisory Center (CPAC) in Stuttgart about a variety of issues, including:

> The current offer states that PCS costs will not be paid. Since my contract with [MMCC] included both [a] LQA [Living Quarters Allowance] and a transportation agreement when I was initially hired from the United States, I am requesting PCS costs to cover transportation for my family, movement of household goods and privately owned vehicle.

Claimant received an electronic message from a human resources specialist at CPAC Stuttgart on January 9, 2009, stating, "The vacancy states no PCS costs because this position was announced for the local commuting area. The government would not pay to move someone to Stuttgart to accept this position. You are eligible for return travel to the United States." Believing that she would have transportation entitlements for return travel back to Texas, claimant accepted the DoD position on January 13, 2009. Claimant submitted a DD Form 1617 transportation agreement on January 27, 2009, showing Haltom City, Texas, as her home of record.[1] At the time she was hired as a new DOD civilian employee claimant did not execute an initial service agreement.

Claimant requested a copy of her overseas allowances report and received the report on April 21, 2010. The report instructed her that, if she had items in NTS, she should forward the fund cites to the CPAC Stuttgart LQA branch. Two years later, claimant provided a receipt dated July 31, 2012, from North Dallas Moving & Storage Co. in Carrollton, Texas, stating that she had had storage at that facility from March 18, 2002, to the then-current date. The receipt shows claimant paying $83.40 per month for that storage.

In January 2012, claimant contacted the CPAC Stuttgart, where she was informed that the CPAC did not have proof of residency in her file and that the DD Form 1617 "had been lined out and PCS was not authorized." On March 9, 2012, claimant received a written determination of non-eligibility for a transportation agreement from the director of CPAC Stuttgart. The determination stated:

> A careful review of the circumstances were [sic] performed and the details of your original hire are as follows. You applied and were selected for announcement EUHR0893888D, Occupational Therapist, YH-0631-02 with

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[1] A DD Form 1617 is a standard DoD form used to establish eligibility for travel and transportation expenses of DoD employees and their immediate family members making a PCS move overseas.

> USA MEDDAC Heidelberg, US Army Health Clinic Stuttgart, Education and Development Intervention [Service], Stuttgart with effective date of 1 March 2009. The area of consideration for announcement EUHR0893888D was for candidates located in the local commuting area within Magnum Medical. The announcement also included expanded consideration to candidates world-wide being possible should insufficient candidates [sic] not be available with the commuting area. Furthermore the announcement stated PCS expenses are not authorized.
>
> We have determined based on the regulatory requirements that you were not eligible for a transportation agreement; as the position was announced for candidates located in the local commuting area, a transportation agreement is not allowed in [accordance with] the JTR [Joint Travel Regulations] Vol II C5564, "New appointee recruited for OCONUS [outside the contiguous United States] service at a geographical locality other than that in which the actual residence is located." Attached is a copy of the erroneous transportation agreement, DD1617. Your SF-50 will be corrected to remove the 5 day home leave accrual and change the 45 day leave accrual to 30 day leave accrual per annum. These changes will not cause a retroactive monetary affect.
>
> At this point, I would like to express our sincere apology for any erroneous information you may have received concerning your entitlements. It is with deep regret that we are not able to provide you with a more favorable determination to the eligibility question on your transportation entitlement.

Claimant's appeal of CPAC Stuttgart's determination that she was not eligible for a service agreement was received by the Board on July 19, 2012. Claimant asserts that she was never informed during her hire by DoD that her "status as a fully entitled employee with home leave and transportation agreement had been invalidated." She states she has been receiving home leave accrual throughout her tenure with the agency and her SF-50 has documented this as an entitlement. She states:

> I would never have accepted the [DoD] occupational therapy position and placed my transportation entitlements in jeopardy and instead would have remained within my contract position. I transitioned into the [DoD] system with full faith that the official DoD forms that I completed as well as email and verbal communication I received from CPAC insured the stability of my entitlement for my family. I am formally requesting formal review of my hiring process and reinstatement of my transportation entitlements.

Claimant also requested that the Board review her entitlement to NTS fees. CPAC Stuttgart takes the position that claimant is not eligible for NTS because she was a local hire residing in the Stuttgart area and did not meet the eligibility requirements for NTS as set forth in Federal Travel Regulation (FTR) 302-8.200 through 8.203, that the employee move to an OCONUS area or between such areas. 41 CFR 302-8.200-.203 (2012) (FTR 302-8.200-.203).

Discussion

When she moved from Texas to Stuttgart in March 2002, claimant moved as a private contractor employee. Claimant had entered into a contract with her employer company that included, among other things, return of her family and household goods from Stuttgart to her home in Texas.

The vacancy announcement for the position that claimant accepted stated that no PCS travel and transportation allowances would be provided because this was a "local hire." However, prior to accepting the new position, claimant checked with CPAC Stuttgart officials and was assured via electronic mail that she was "eligible for return travel" back to Texas. Notwithstanding this assurance, claimant was not provided an initial service agreement setting forth her rights and responsibilities.[2]

In March 2012 claimant was informed that she had no entitlement rights for transportation of her family back to Texas. Later she also was informed that she was not eligible for NTS.

Title 5, section 5722(a)(2) of the United States Code authorizes an agency to pay an employee's travel and transportation "expenses on the return of an employee from his post of duty outside the continental United States to the place of his actual residence at the time of assignment to duty outside the continental United States." 5 U.S.C. § 5722(a)(2) (2006). This Board recently had occasion to issue an advance decision addressing PCS benefits where a uniformed service member who was stationed OCONUS retired and accepted a civilian position in the same location with the Department of the Navy. *Peter A. Kosloski*, CBCA 2991-RELO, 12-2 BCA ¶ 35,169. In *Kosloski*, where both the agency and the claimant asked that the claimant be allowed to retain PCS benefits, we stated:

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[2] Claimant and agency refer to a service agreement as a transportation agreement. As the regulations speak in terms of service agreements, the Board uses this terminology.

> The Federal Government provides relocation benefits only to new appointees who are assigned to duty stations other than their places of residence and employees who are transferred to new duty stations in the interest of the Government. 5 U.S.C. subch. 57-II (2006); 41 CFR 302-1 (2012). [Claimant], as a first-time civilian employee, is considered for the purpose of relevant law to be a new appointee, notwithstanding his previous military service. He was hired locally and did not relocate to assume his new position. He is therefore ineligible for relocation benefits. *Randy Prewitt*, CBCA 1548-RELO, 09-2 BCA ¶ 34,253; *Henry H. Arnold IV*, GSBCA 16275-RELO, 04-1 BCA ¶ 32,586; *Wilbert J. Haggray*, GSBCA 16139-RELO, 03-2 BCA ¶ 32,387.

Id. at 172,566.

According to the agency, when it recruited individuals to be "locally hired" for the DoD position that claimant accepted, it specified in the vacancy announcement that PCS expenses were not authorized. PCS allowances, which include relocation allowances, may only be authorized when an agency determines that an employee's PCS is in the best interest of the Government and the employee signs a service agreement. FTR 302-2.101. An agency may determine that well qualified candidates exist within a particular geographical area and indicate that PCS allowances are not offered. JTR C5005-A.

The agency cites FTR 301-8.200 through .203 to support its position that claimant is not eligible for NTS of her HHG. Claimant argues that FTR 302-8.200(b) provides an agency with discretion to authorize NTS of an employee's HHG when it is in the public interest. This is not a matter of agency discretion; we disagree with claimant's interpretation of this FTR provision. As a fundamental matter, for any relocation expense to be reimbursable, the expense must be authorized by law and found to be incurred in the best interest of the agency. Here, no relocation expenses are authorized by law because claimant was a "local hire" who did not meet the statutory requirements necessary to be eligible for relocation benefits. As claimant is not entitled to relocation expenses, including PCS benefits, she is not entitled to be reimbursed for the storage of HHG. NTS of HHG is a type of relocation benefit. *Kosloski*. The fact that the agency in its vacancy announcement informed candidates that PCS benefits were not authorized only confirmed the fact that, regarding this matter, the agency had no statutory authority to provide relocation benefits to individuals who were locally hired.

Claimant states she never would have taken the new DoD position had she not been assured the she had retained her rights to transportation home expenses for herself and her family, as well as her HHG storage. It has long been recognized that an agency cannot

expand employee entitlements that are not authorized by statute.[3] That is true even if the agency has given an employee erroneous information, upon which the employee relied, to make his or her employment and travel plans. While the CPAC Stuttgart apparently gave claimant erroneous information that she was "eligible for return travel to the United States," that erroneous information cannot serve to expand entitlements not allowed by law. This Board has repeatedly held that detrimental reliance on erroneous advice from a government official will not confer on a claimant entitlement to recovery, where there is no authority under statute and regulation for the relief being sought. *Kristin L. Loer*, CBCA 2155-RELO, 11-1 BCA ¶ 34,700; *Carl H. Welborn, Jr.*, CBCA 2151-RELO, 11-1 BCA ¶ 34,650 (2010); *Barbara A. Maloney*, CBCA 2023-RELO, 10-2 BCA ¶ 34,593; *Romeo Ayalin III*, CBCA 1533-RELO, 09-2 BCA ¶ 34,218.

The agency was correct in finding claimant is not entitled to relocation benefits.

Decision

The claim is denied.

PATRICIA J. SHERIDAN
Board Judge

[3] As this Board observed in *Julie N. Lindke*, CBCA 1500-RELO, 09-2 BCA ¶ 34,141, at 168,784-85, *aff'd on reconsideration*, 09-2 BCA ¶ 34,191:

> 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.") The Supreme Court consequently has made clear that an executive branch employee's promise that the Government will make an "extrastatutory" payment is not binding. Where relevant statute and regulations do not provide for payment for a particular purpose, an agency may not make such payment. *Bruce Hidaka-Gordon*, GSBCA 16811-RELO, 06-1 BCA ¶ 33,255; *Alexander S. Button*, GSBCA 16138-RELO, 04-1 BCA ¶ 32,452 (2003); *Teresa M. Erickson*, GSBCA 15210-RELO, 00-1 BCA ¶ 30,900 (all citing *Office of Personnel Management v. Richmond*, 496 U.S. 414 (1990); *Federal Crop Insurance Corp. v. Merrill*, 332 U.S. 380 (1947)).