



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

February 12, 2014

CBCA 3376-RELO

In the Matter of JERRY HERSH

Jerry Hersh, Alexandria, VA, Claimant.

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

DANIELS, Board Judge (Chairman).

Jerry Hersh, M.D., moved from Landstuhl, Germany, to Washington, D.C., in December 2011. He had been working for the Department of Defense (DoD) in Germany, and upon arriving in Washington, he began to work for the Department of Veterans Affairs (VA). Dr. Hersh asks the Board to review the VA's decision not to reimburse him for expenses he incurred to rent temporary living quarters after moving to Washington. We affirm the VA's determination.

Background

Dr. Hersh was transferred by DoD from Virginia to Germany in 2009. During the summer of 2011, he relates to us, he and his wife decided to return to the United States. They both began seeking employment in this country. Mrs. Hersh found a position first; she moved to the Washington area, where she lived in a hotel in suburban Virginia.

On November 14, 2011, DoD issued travel orders to Dr. Hersh, returning him from Germany to Washington for the purpose of separating from government service. Two days later, the VA offered him a position in Washington. He accepted it, moved to Washington under the DoD orders on December 9, and commenced work for the VA on December 19. He and his wife resided then, and until March 3, 2012, in the hotel room she had rented. The

record does not contain a travel authorization issued by the VA in connection with the present job.

Upon his arrival in Washington, Dr. Hersh asked the VA to reimburse him for relocation expenses he incurred, but which DoD had not paid – the costs of the hotel room and meals. The VA dithered; some officials told him they thought he should be reimbursed, while others said reimbursement was inappropriate. More than a year and a half passed before the department eventually decided not to pay for those expenses. The rationale for this determination, as expressed in response to Dr. Hersh's request for Board review, is that because DoD paid for his relocation to an address in suburban Virginia and he lived there when he began his assignment with the VA, his old and new official stations were less than fifty miles apart, so he was ineligible for relocation benefits.

Discussion

The VA's unresponsiveness is inexcusable and its justification for denying benefits is off the mark, but its determination is right: Dr. Hersh is not entitled to the benefits he seeks.

The fundamental reason for this conclusion is that Dr. Hersh did not move from Germany to Washington under orders issued by the VA. There is no indication in any of the documents in our record that the VA offered relocation benefits for the job Dr. Hersh accepted. The documents do show, though, that DoD was the department that issued orders to him and paid for his travel and the transportation of his household goods. DoD did this to fulfill its commitment to return Dr. Hersh, upon his separation from government service, to his home of record or the place in the United States from which he had moved to perform duty for that department overseas. The relocation benefits were provided by the Government for a reason entirely separate from Dr. Hersh's acceptance of the position with the VA.

There are subsidiary reasons, as well, why the VA should have declined to reimburse Dr. Hersh for the costs he incurred in renting temporary quarters. First, the doctor may have been ineligible to receive reimbursement for those costs. Although the record is not definitive as to when he separated from service as a DoD employee, if that date was prior to December 19, 2011 – when he began work for the VA – the break in service between his two jobs effectively made him a new appointee to government service on the latter date. *Michael C. Kostelnik*, CBCA 3483-RELO, 13-1 BCA ¶ 35,430. Temporary quarters subsistence expenses are not available to new appointees. 41 CFR 302-6.5 (2011). Second, even if Dr. Hersh had been transferred from Germany in the interest of the Government, under VA travel orders, and he was not a new appointee when he began work for the VA, that department was not obligated to provide the benefits he seeks. Agencies have discretion

to determine whether granting temporary quarters subsistence expenses is in the Government's interest, and we honor determinations unless they are arbitrary or capricious. 41 CFR 302-6.6; *Christopher Sickler*, CBCA 1010-RELO, 08-1 BCA ¶ 33,825. We have no reason to believe that the decision to deny reimbursement of these expenses was arbitrary or capricious.

Decision

The claim is denied.

STEPHEN M. DANIELS
Board Judge