



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

May 2, 2017

CBCA 5646-RELO

In the Matter of MARIA N. CARRILLO

Maria N. Carrillo, Blaine, WA, Claimant.

Micah Bennett, Office of Assistant Chief Counsel, Customs and Border Protection, Department of Homeland Security, Indianapolis, IN, appearing for Department of Homeland Security.

BEARDSLEY, Board Judge.

Claimant, Maria N. Carrillo, seeks the Board's review of the decision by Customs and Border Protection (CBP) to reclaim and not pay relocation expenses for her twenty-two-year-old daughter.

Factual Background

Claimant accepted a position in Vancouver, British Columbia requiring her to relocate from San Ysidro, California, in September 2016. She was accompanied by her twenty-two-year-old daughter, who was pursuing higher education and was fully supported by claimant. A senior relocation counselor changed claimant's authorization to allow for full relocation expenses for claimant's daughter, and the director of field operations certified Ms. Carrillo's authorization. Based on the authorization, claimant claimed reimbursement and was paid for her daughter's per diem and temporary quarters subsistence allowance (TQSA). She also claimed reimbursement for her daughter's predeparture subsistence expense portion of

claimant's foreign transfer allowance (predeparture FTA) but has not yet been paid for it.¹ CBP later determined that it had made a mistake by paying claimant's daughter's per diem and TQSA.² Claimant has asked the Board to review CBP's decision not to reimburse her for her daughter's per diem, TQSA, and predeparture FTA.³ Claimant argues that she should not be required to pay her daughter's travel costs because they were pre-approved and claimed as a result of CBP's erroneous advice.

Discussion

Under the Federal Travel Regulation (FTR), transferred employees and their immediate family members are entitled to per diem when relocating from the continental United States (CONUS) to a new duty station outside the continental United States (OCONUS). 41 CFR 302-3.101, table B (2016) (FTR 302-3.101, table B). Under the FTR, however, only children "who are unmarried and under 21 years of age or who, regardless of age, are physically or mentally incapable of self-support" are included in the definition of "immediate family." FTR 300-3.1. Claimant admits that her daughter was not under twenty-one years of age at the time claimant reported for duty, and she has not alleged that her daughter was physically or mentally incapable of supporting herself. Accordingly, claimant's daughter was not a member of claimant's immediate family for purposes of receiving relocation expense reimbursement; and therefore, claimant is not entitled to reimbursement for her daughter's per diem. *Patrick W. Brewer*, GSBCA 15159-RELO, 00-1 BCA ¶ 30,893 (rejecting the argument that a full-time student in college dependent on parents for support is entitled to relocation expenses).

¹ Claimant noted CBP's failure to reimburse her for three previously submitted vouchers. CBP asserted that it had not paid claimant for one of the vouchers because it had not received the voucher. Claimant attached the missing voucher to her response in this case. CBP did not pay claimant for the other two vouchers because the amount owed CBP by claimant exceeded the combined total of the two vouchers.

² CBP has not finalized its calculation of the amount of the overpayment made to claimant.

³ To the extent that Ms. Carrillo is requesting that the Board review a decision by CBP to reduce or adjust her living quarters allowance (LQA), the Board lacks jurisdiction to do so. *Willie J. Chandler*, CBCA 5286-RELO, 16-1 BCA ¶ 36,348 ("LQA is not a travel, transportation, or relocation expense that would fall within the authority that the Administrator of General Services has delegated to [the Board], but is instead a species of federal employee compensation that falls within OPM's [Office of Personnel Management] settlement authority.")

CBP has discretionary authority to pay or reimburse certain relocation allowances when an employee is transferred to a foreign area. Under the Department of State Standardized Regulations (DSSR) that apply here, TQSA and predeparture FTA may be authorized. FTR 302-3.101, table B; DSSR §§ 123, 241.2. The DSSR states that an agency may provide predeparture FTA to an “employee and each member of [her] family” to offset the cost of “lodging, meals (including tips), laundry, cleaning and pressing expenses in temporary quarters.” DSSR § 241.2(c). Likewise, the DSSR defines TQSA as “an allowance granted to an employee for the reasonable cost of temporary quarters, meals[,] and laundry expenses incurred by the employee and/or family members.” DSSR § 121. Claimant’s daughter, however, is not included in the definition of “family member.” A family member includes only “children who are unmarried and under 21 years of age or, regardless of age, are incapable of self-support.”⁴ DSSR § 040(m)(2). Claimant, therefore, is not entitled to reimbursement for her daughter’s TQSA or predeparture FTA.

Although the agency erroneously advised claimant to claim reimbursement for her twenty-two-year-old daughter and paid the daughter’s relocation expenses, the law is well-settled that a government official may not obligate the Government to spend money in violation of statute or regulation. “[N]either erroneous advice given by a Government employee nor erroneous travel orders can create a right to reimbursement in excess of statutory and regulatory entitlements.” *David Klaus*, GSBCA 16338-RELO, 04-1 BCA ¶ 32,612 (citing *Aman B. Kay*, GSBCA 15543-RELO, 01-2 BCA ¶ 31,508, and *Wendy Castineira*, GSBCA 15092-RELO, 00-1 BCA ¶ 30,740).

Decision

For the foregoing reasons, the Board affirms the agency’s decision to reclaim claimant’s daughter’s per diem and TQSA and not to pay claimant’s daughter’s predeparture FTA.

ERICA S. BEARDSLEY
Board Judge

⁴ The DSSR’s extension of the age limit of a child to twenty-two or twenty-three years of age is for the limited purpose of an education travel allowance and does not apply here. DSSR §§ 040(m)(2), 281(d), 284.