



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

September 11, 2017

CBCA 5736-RELO

In the Matter of PAUL R. TIPPETT

Paul R. Tippett, Suwanee, GA, Claimant.

Mia P. Haessly, Assistant Counsel, Office of the Inspector General, Department of Homeland Security, Washington, DC, appearing for Department of Homeland Security.

BEARDSLEY, Board Judge.

Claimant, Paul R. Tippett, is an employee of the Department of Homeland Security (DHS), Office of the Inspector General (OIG). He requests relocation reimbursement in the amount of \$74,107.01.

Factual Background

On September 29, 2015, the agency advertised for an assistant special agent in charge (ASAC) position in the Atlanta, Georgia, field office. The advertisement for the position indicated:

Relocation Authorized

- Yes
- Relocation may be Authorized

In December 2015, claimant accepted the position. Acceptance of the new position required that claimant would relocate from Seattle, Washington, to Atlanta, Georgia. Claimant had been informed at the interview for the position that his move would not be fully funded. In

January 2016, claimant was informed that there was no money available for relocation expenses. In February 2016, the agency canceled the vacancy announcement due to the ambiguous and erroneous language regarding relocation expenses. The agency, thereafter, notified claimant that it did not intend to fill the ASAC position in Atlanta based on workload requirements, management structure, and operational goals.

Claimant filed a claim with the Merit Systems Protection Board (MSPB) alleging that the agency retaliated against him by denying his promotion to ASAC in Atlanta. The parties entered into a settlement agreement to resolve the MSPB claim. As part of the settlement, claimant was hired as the ASAC in the Atlanta office. The settlement agreement stated that “[it] is the Complainant’s desire and request, for personal and voluntary reasons, to transfer from Seattle, Washington to Atlanta, Georgia. Complainant understands and agrees that his transfer . . . does not make him eligible for or entitled to any relocation costs, expenses, or bonuses and that relocation costs, expenses, and bonuses will not be paid to him in connection with this relocation.” Claimant agreed to release all claims against the agency and release the agency from any claims for relocation expenses or costs, including any right or claims arising under the Federal Travel Regulation (FTR). As part of the settlement, the agency provided claimant with ninety-five days of temporary duty (TDY) to travel to Atlanta, locate a residence, and begin the transition to the ASAC position. The TDY included airfare, lodging, per diem, and a rental car. Mr. Tippet was also allotted forty hours of administrative leave to facilitate the transfer of goods to Atlanta. The settlement agreement was signed on August 29, 2016.

On September 16, 2016, claimant received his official offer letter for the ASAC position in Atlanta and completed his transfer on December 16, 2016. On April 27, 2017, claimant sent an email message to agency counsel, Ms. Holliday-McDonald, requesting that the agency pay his relocation expenses. Ms. Holliday-McDonald replied that she was on detail to another agency but would forward the email message to the office of the inspector general’s (OIG) counsel. When claimant did not receive a reply from OIG’s counsel, he filed a claim with the Board on May 8, 2017. Claimant indicated that the agency’s lack of reply “should be sufficient to constitute DHS OIG’s denial of [permanent change of station] PCS.” The agency, however, asserts that the claim before the Board is not ripe for decision because the agency did not adjudicate or formally deny the claim. The agency noted further that the claim was deficient because claimant failed to provide any documentation, such as receipts, contracts, or invoices, to support his claim. Similarly, the claim to the Board outlined the expenses claimed, such as sale of a residence, travel from permanent duty station (PSD) to new PSD, transportation of household goods, purchase of a residence, and miscellaneous expenses, but stated that “copies of all receipts for my PCS [permanent change of station] transfer will be provided as requested.” Before making a determination on the claim, the agency would require that claimant submit all of the documentation to support the amount

claimed. The agency has stipulated that “in the interest of judicial efficiency” and “for the purpose of [its] response,” it has formally denied Mr. Tippett’s claim.

Discussion

CBCA Rule 401 defines the procedures that apply to the Board’s review of “[c]laims for reimbursement of expenses incurred in connection with relocation to a new duty station.” 48 CFR 6104.401 (2014). Rule 401(c) provides:

Any claim for entitlement to travel or relocation expenses must first be filed with the claimant’s own department or agency (the agency). The agency shall initially adjudicate the claim. A claimant disagreeing with the agency’s determination may request review of the claim by the Board. The burden is on the claimant to establish the timeliness of the claim, the liability of the agency, and the claimant’s right to payment. The Board will issue the final decision on a claim based on the information submitted by the claimant and the agency.

The agency asserts that it has not adjudicated or formally denied (except for the purposes of its response and in the interest of judicial efficiency) claimant’s claim. The agency indicated that it was impossible for the agency to adjudicate the claim because claimant provided no supporting documentation.

We find that the claimant has not met his burden to establish that the agency had adjudicated his claim before he filed it with the Board. The agency’s lack of a reply after the claim was submitted to the wrong person was not sufficient to constitute an adjudication of the claim, especially given the lack of supporting documentation submitted. Additionally, the agency’s stipulation that the claim has been denied is not an initial adjudication of the claim within the purview of Rule 401, as that rule requires the agency to adjudicate a claim before an employee requests review from this Board. To allow the agency to stipulate a denial after a request for review is filed at this Board would relieve the agency of its obligation to initially adjudicate the claim. Thus, given that the agency has not adjudicated this claim, this matter is not ripe for Board review and must be dismissed. *Richard Gong*, CBCA 5598-RELO, 17-1 BCA ¶ 36,759, at 179,146; *Richard P. Fenner*, CBCA 3207-RELO, 13 BCA ¶ 35,341, at 173,461.

Decision

The claim is dismissed, as it has not been adjudicated by the agency. The agency is directed to inform claimant as to the name, position, address, and contact information for the

agency official who has the authority to adjudicate claims for relocation expenses.

ERICA S. BEARDSLEY
Board Judge