



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

February 6, 2017

CBCA 5294-RELO

In the Matter of PAUL J. BAUER

Paul J. Bauer, Tucson, AZ, Claimant.

Christina Browning, Assistant Regional Counsel, Navy Region Japan/Naval Forces Japan, FPO Area Pacific, appearing for Department of the Navy.

RUSSELL, Board Judge.

In July 1992, Paul J. Bauer was hired locally by the Navy in Yokosuka, Japan. He worked in various positions, but after being notified that his final tour with the Navy was set to expire in July 2015, Mr. Bauer secured employment with the Air Force in Tucson, Arizona. He alleges that he incurred travel expenses related to his relocation from Yokosuka to Arizona. He initially asked the Board to review both agencies' determinations not to pay him certain travel-related expenses under a travel authorization that allowed for various travel expenses including provision of a temporary quarters subsistence allowance (TQSA). However, Mr. Bauer subsequently resolved his claim against the Air Force. Accordingly, the only remaining issue is Mr. Bauer's challenge to the Navy's denial of his claim for TQSA incurred while in Yokosuka just prior to his departure from that city.

Discussion

The statute governing quarters allowances for federal civilian employees provides in relevant part:

(a) When Government owned or rented quarters are not provided without charge for an employee in a foreign area, one or more of the following quarters allowances may be granted when applicable:

(1) A temporary subsistence allowance for the reasonable cost of temporary quarters (including meals and laundry expenses) incurred by the employee and his family—

(A) for a period not in excess of 90 days after first arrival at a new post of assignment in a foreign area or a period ending with the occupation of residence quarters, whichever is shorter; and

(B) for a period of not more than 30 days immediately before final departure from the post after the necessary evacuation of residence quarters.

(2) A living quarters allowance [LQA] for rent, heat, light, fuel, gas, electricity, and water. . . .

5 U.S.C. § 5923 (2012).

The Department of State, delegated the authority to promulgate regulations under this statutory provision, has set forth requirements for quarters allowances in the Department of State Standardized Regulations (DSSR). The DSSR delegates to agency heads like the Secretary of Defense the authority to issue implementing regulations regarding the granting of such allowances. DSSR 013. Under the Department of Defense's implementing regulations, applicable to Mr. Bauer, civilian employee are authorized TQSA immediately preceding a final departure from a permanent duty station if the employee is eligible for an LQA under the Department of Defense Instruction (DoDI) 1400.25, volume 1250, and the DSSR. Joint Travel Regulations (JTR) 1257.

The DSSR states that an LQA may be granted to civilian employees recruited outside the United States, like Mr. Bauer, provided that:

- a. the employee's actual place of residence in the place to which the quarters allowance applies at the time of receipt thereof shall be fairly attributable to his/her employment by the United States Government; and
- b. prior to appointment, the employee was recruited in the United States, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the former Canal Zone, or a possession of the United States, by:
 - (1) the United States Government, including its Armed Forces;
 - (2) a United States firm, organization, or interest;
 - (3) an international organization in which the United States Government participates; or
 - (4) a foreign government

and had been in substantially continuous employment by such employer under conditions which provided for his/her return transportation to the United States, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the former Canal Zone, or a possession of the United States; or

- c. as a condition of employment by a Government agency, the employee was required by that agency to move to another area, in cases specifically authorized by the head of agency.

Subsection 031.12b may be waived by the head of agency upon determination that unusual circumstances in an individual case justify such action.

DSSR 031.12; *see also* DSSR 040.i(4) (stating that DSSR 031.12 pertains to "local hires").

Mr. Bauer does not meet the eligibility requirements for an LQA. The location to which the quarters allowance would have applied, Japan, was attributable to his employment by the United States Government. However, Mr. Bauer was recruited not in the United States, but in Japan. Further, the Navy asserts, and Mr. Bauer does not dispute, that as a local hire, he was ineligible to negotiate a transportation agreement throughout his employment with the Navy. Accordingly, the Navy was not obligated to pay for his return

to the United States. Nor is there any documentation in the record evidencing that the head of the Department of the Navy mandated Mr. Bauer's moves to either Japan or the position in Arizona. Instead, the record evidences that Mr. Bauer was a local hire in Japan and sought the position with the Air Force in Arizona due to expiration of his Navy employment. Thus, because Mr. Bauer does not meet eligibility requirements for an LQA, he is not entitled to a TQSA. *See George Panos*, CBCA 4946-RELO, 16-1 BCA ¶ 36,402 (claimant ineligible for a TQSA because he did not meet requirements for receipt of an LQA); *James E. Pierce, Jr.*, GSBCA 15201-RELO, 00-1 BCA ¶ 30,816.

This decision comports with the very purpose of overseas allowances. As stated in the DoDI, TQSAs and LQAs are not automatic salary supplements or entitlements, but instead, intended as recruitment incentives for U.S. civilian employees living in the United States to accept federal employment in a foreign area. DoDI 1400.25 ¶ 4.c; *see also Acker v. United States*, 620 F.2d 802, 806 (Ct. Cl. 1980) (The provision of an LQA is "designed to give something extra to employees who *must* go overseas." (emphasis added)). Mr. Bauer, locally-hired by the Navy in Japan, does not fall within the category of employees for whom these benefits are intended. *Acker*, 620 F.2d at 806 (LQA not intended for those already in foreign area to compensate them as though they had come from the United States).

Mr. Bauer argues that he had no knowledge of applicable regulations and that his travel orders would have been clearer if the orders had not stated that he was entitled to TQSA. It is unfortunate that his travel orders, on which he reasonably relied, were wrong and resulted in financial hardship for him and his family. However, erroneous travel orders, even those on which an employee detrimentally relies, "cannot create an entitlement that does not exist in statute or regulation." *Panos*; *see also Frank Lacks, Jr.*, CBCA 1785-RELO, 10-1 BCA ¶ 34,374. The Board simply does not have authority to circumvent applicable statutory and regulatory provisions to "right the wrong" that might have occurred here. *See Andrew J. Marks*, CBCA 672-RELO, 07-2 BCA ¶ 33,602.

Decision

For the reasons stated above, the claim is denied.

BEVERLY M. RUSSELL
Board Judge