UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

January 12, 2022

CBCA 7161-RELO

In the Matter of RUBEN M.

Ruben M., Claimant.

Connie J. Rabel, Director, Travel Mission Area, Enterprise Solutions and Standards, Defense Finance and Accounting Service, Indianapolis, IN, appearing for Department of Defense.

LESTER, Board Judge.

The Defense Finance and Accounting Service (DFAS) has requested reconsideration of our decision dated November 24, 2021, granting claimant's request for temporary quarters subsistence expense (TQSE) for his family after he and his family had to return home early from a tour of duty outside the continental United States (OCONUS) when claimant was called to active military duty.

As we recognized in our prior decision, when claimant was called to active military duty, claimant's employing agency had certain obligations to claimant under the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), 38 U.S.C. §§ 4301–4335 (2018), including an obligation to maintain benefits that claimant and his family were receiving during his tour of duty (such as on-post housing and diplomatic privileges and immunity). Just before claimant's departure for active duty, the agency discovered that, while claimant was on active duty, it could not continue to satisfy those obligations. We found that the agency, having learned that it could not permit claimant's family to remain in the Dominican Republic during claimant's active duty, acted reasonably by releasing claimant from his three-year OCONUS commitment and transferring claimant, along with his family, back to claimant's home duty station of Doral, Florida, for the remainder of his tour of duty with the agency.

The agency asserts that our decision conflicts with 5 U.S.C. § 5279 (2018) (section 5279) and a Comptroller General decision, 58 Comp. Gen. 606 (1979), which held that, under the provisions of section 5279, TQSE is not payable when a federal employee's dependents return from overseas to the continental United States prior to the employee's return transfer. DFAS has correctly stated the rule as it applies to an early return of dependents traveling before the employee is transferred home, but that rule has no applicability to the case before us. As we held in our decision in this matter, "[c]laimant's family returned to Doral at the same time that claimant did." There was no "early return of dependents." The sole basis of DFAS's reconsideration request relies upon a mischaracterization of the facts of this case as we found them to be.

In requesting reconsideration, the agency goes out of its way to raise new questions about claimant and whether claimant's transfer to the Doral area was actually authorized. It was, and, to the extent that there are variations in different documents that DFAS required claimant and his employing agency repeatedly to submit to justify the TQSE claim for claimant's family, they are minor nonconformances that resulted from a process in which DFAS requested numerous revisions and resubmissions while claimant was serving on active military duty in a war zone. That DFAS goes out of its way to try to find a way to place monetary responsibility on claimant for his transfer and his family's return to Doral is a disservice to claimant and to the agency's obligations under the USERRA. "Generally, in reviewing travel [and relocation] claims, an agency should endeavor to reimburse employees for costs that they reasonably incurred while on official travel for the Government, subject only to any specific prohibitions on such reimbursement." *Lee C. Moores*, CBCA 6004-TRAV, 18-1 BCA ¶ 36,990. "[T]he agency's goal should be to try to provide for reimbursement" whenever reasonably possible, *id.*, not to try to find ways to save money by shifting monetary burdens to its employees.

DFAS's request for reconsideration is denied.

Harold D. Lester, Jr.

HAROLD D. LESTER, JR.
Board Judge