



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

June 24, 2024

CBCA 8026-RELO

In the Matter of AARON R.

Aaron R., Claimant.

Kerry A. Santos, Career Field Administrator, Air Force Personnel Center, Department of the Air Force, Universal City, TX, appearing for Department of the Air Force.

GOODMAN, Board Judge.

Claimant, a civilian employee of the Department of Defense (DoD), has asked this Board to review the agency's denial of his request for reimbursement for miscellaneous expense allowance (MEA) for pet transportation incurred during a permanent change of station (PCS).

Background

In 2019, pursuant to a service agreement and PCS orders, claimant transferred from his residence in the continental United States (CONUS) to a position outside of the continental United States (OCONUS). Claimant transported his pet dog to his new overseas duty station. His travel orders authorized reimbursement of MEA. Claimant said he was reimbursed a flat rate for MEA in the amount of \$1847. Claimant explains that since flat rate MEA was claimed, and he did not itemize his expenses, no portion of the reimbursement was for a specific expense. He considered himself partially reimbursed for pet shipment.

Claimant fulfilled the obligations of his service agreement. He applied for and was selected for another agency position in CONUS, with work to be performed remotely. On June 30, 2022, claimant's OCONUS activity (the losing activity) issued travel orders for claimant and his family to return to CONUS, designating his new permanent duty station

(PDS) as his previous residence in CONUS or an alternate destination. In section 16 of the travel orders, the box for miscellaneous expenses was not checked. The orders also stated:

27. This order is for Losing Base entitlements only [in accordance with] [Joint Travel Regulations (JTR)], CH 5, Part F. **If applicable, the gaining activity may authorize PCS allowances; MEA, [relocation income tax allowance (RITA)], per diem for dependent(s), and Real estate allowances (if the employee is eligible)** and at the gaining activity's discretion [temporary quarters subsistence expense (TQSE)] may be paid. An Amendment requested to add Gaining Unit Entitlements will need to be sent to pcs.authorization@us.af.mil by the Gaining CPS.

(Emphasis added.)

Claimant's return travel orders authorized the following relocation expenses: transportation for employee and dependents, per diem for employee, shipment and temporary storage of household goods (HHG), RITA, and shipment of privately owned vehicle.

Rather than return to his previous residence in CONUS, claimant established a residence at the alternate destination designated in his travel orders from which he remotely performs his duties for the new position to which he transferred. When claimant and his family returned to CONUS, he transported his dog from OCONUS to CONUS via air transport.

Discussion

Claimant seeks reimbursement of MEA for transport of his dog during his move to CONUS, which the agency denied. Claimant contends that reimbursement of MEA is a mandatory, and not a discretionary, expense, even though the "MEA box was not checked on [his] return orders." Claimant's Notice of Claim at 2.

The agency asserts that MEA is not a mandatory entitlement for an employee who does not return to the same CONUS residence where the employee resided before being transferred OCONUS. Further, the agency asserts that if MEA is authorized, it must be authorized and funded by the gaining unit, as stated in claimant's travel orders. Agency's Response to Claim at 5, 8.

Claimant is Not Required to Return to His Previous Residence to Receive Return Travel Benefits

Contrary to the agency's assertion, an employee is not required to return to his previous CONUS residence in order to be entitled to return travel benefits that are otherwise mandatory. In *Sheri L. Ellis-Smith*, CBCA 4022-RELO, 15-1 BCA ¶ 36,057, this Board stated:

The Board has recognized that once an employee has successfully completed an OCONUS tour of duty, the agency must pay the cost of relocating that employee either to the home of record or *other location selected by the employee*, up to the constructive cost of returning the employee to his or her home of record at the time of transfer. See *Sara E. Young*, CBCA 3540-RELO, 14-1 BCA ¶ 35,607; *William G. Sterling*, CBCA 3424-RELO, 13 BCA ¶ 35,438, *reconsideration denied*, 14-1 BCA ¶ 35,483 (2013); *Michael W. Silva*, CBCA 1707-TRAV, 10-1 BCA ¶ 34,354.

15-1 BCA at 176,076 (emphasis added).

Thus, claimant was not required to return to his prior CONUS residence in order for his right to return travel benefits to accrue. Claimant established a new residence at the alternate location indicated on his travel orders.

Payment of MEA is Mandatory When an Employee Transfers OCONUS to CONUS

The Federal Travel Regulation (FTR) defines MEA as an allowance that “is intended to help defray some of the costs incurred due to relocating.” 41 CFR 302-16.1 (2023) (FTR 302-16.1). The costs for the transportation of pets, such as “dogs, cats, and other house pets, as well as costs due to stringent air carrier rules,” is included in the definition of MEA. *Id.* 302-16.2.

The statutory authority for MEA is set forth at 5 U.S.C. § 5724a(f) (2018), which provides, in relevant part, that, under applicable regulations and subject to maximum payment limits, an employee who is reimbursed for travel and transportation expenses under sections 5724(a) or 5724a(a)-(e) of title 5 of the United States Code is also entitled to MEA. See *Charles J. Wright*, CBCA 4799-RELO, 15-1 BCA ¶ 36,138, at 176,385 (“Statute provides that when an employee transfers in the interest of the Government, the agency to which that employee transfers shall . . . reimburse or pay . . . MEA . . .”).

Claimant meets the requirement of a “transferred employee” within the relevant FTR provision, which defines such an employee as “an employee who transfers from one official

station to another.” 41 CFR 302-3.100. The regulation also provides the following guidance on mandatory and discretionary relocation expenses:

As a transferred employee or other relocated employee what relocation allowances must my agency pay or reimburse to me?

As a transferred employee or other relocated employee there are mandatory and discretionary relocation expenses. Once an agency decision is made to pay or reimburse relocation expenses indicated for the type of relocation in tables (A) through (I) of this section, all the mandatory allowance must be paid or reimbursed, unless otherwise stated in the applicable parts. The discretionary relocation allowances indicated in tables (A) through (I) of this section may or may not be paid by the agency.

Id. 302-3.101.

Table C of this regulation applies to claimant and is titled “Transfer From OCONUS Official Station to an Official Station in CONUS.” Column 1 of table C lists mandatory relocation expenses, characterizing them as “[r]elocation allowances that [the] agency must pay or reimburse,” which includes MEA. It is clear from claimant’s travel orders allowing him to relocate to either the place of residence prior to his OCONUS assignment or an alternate destination in CONUS that the agency authorized various relocation expenses and therefore must pay MEA as a mandatory expense listed in table C.

In *Rebecca J. Lott*, CBCA 6354-RELO, 19-1 BCA ¶ 37,328, *reconsideration denied*, 19-1 BCA ¶ 37,476,¹ this Board resolved a claim for MEA under circumstances similar to the current case. Claimant, a DoD civilian employee, transferred within her agency from an OCONUS PDS, returning to her CONUS PDS after completing duty under her service agreement. Her agency authorized MEA when she transferred to her OCONUS PDS. When she exercised her statutory right of return to her prior PDS, pursuant to her service agreement, her travel orders did not include MEA but indicated that the gaining command was authorized to amend the orders with the concurrence of the losing activity. When issuing the travel orders, the losing activity notified the gaining activity that claimant was requesting thirty days of TQSE and asked whether the gaining activity was authorizing other

¹ The *Lott* decision on reconsideration discusses the rights of an employee separating from the Government upon completing an assignment OCONUS and the “return rights” of an employee transferring from OCONUS to CONUS while continuing government service.

relocation expenses, including MEA, so that those could be added to her travel orders. The gaining activity informed the losing activity that it was not authorizing such expenses.

Even so, the Board in *Lott* concluded that the claimant met the eligibility conditions for payment of MEA as an employee transferred from OCONUS to CONUS and that she was entitled to MEA. The Board held that pursuant to the requirements of FTR 302-3.101, once an agency decides to pay or reimburse a transferring employee's relocation expenses, the agency cannot pick and choose which *mandatory* allowances associated with that transfer it will elect to fund. Since table C to the regulation includes MEA as a mandatory allowance for transfers from an OCONUS to a CONUS PDS, once the losing activity authorizes reimbursement of transportation costs (including employee per diem and the transport and temporary storage of HHG), the employee becomes entitled to all mandatory allowances associated with an OCONUS to CONUS PDS transfer, including MEA.

Additionally, in *Lott*, the agency made the same argument as the agency here, asserting that the gaining activity had the authority to authorize MEA, leaving it to the discretion of the gaining authority. The Board found this argument without merit, stating:

We must reject the Navy's argument. . . . Ms. Lott ultimately is an employee of the Navy, and the Navy cannot use the JTR to split itself into unrelated individualized entities or to make mandatory entitlements discretionary. . . . The FTR is a "legislative rule" of "controlling weight," *Kevin D. Reynolds*, CBCA 2201-RELO, 11-1 BCA ¶ 34,756, at 171,061, and any JTR provision (or interpretation of a JTR provision) that conflicts with the FTR is invalid "because the JTR 'does not have the force of law and cannot alter an FTR determination.'" *Scott M. Torrice*, CBCA 2431-TRAV, 11-2 BCA ¶ 34,839, at 171,386 (quoting *Frank J. Salber*, GSBCA 16836-RELO, 06-2 BCA ¶ 33,330, at 165,286). While the Navy can internally debate which Navy office should pay Ms. Lott's MEA, Ms. Lott is ultimately entitled to her MEA payment no matter the result of that debate. *See Tejbir Singh*, GSBCA 15830-RELO, 02-2 BCA ¶ 31,924, at 157,730 (JTR provision explaining which employee expenses will be reimbursed by gaining activity and which by losing activity "has no bearing on [the employee's] eligibility to be reimbursed.")^[2]

Rebecca J. Lott, 19-1 BCA at 181,548-49. Here, the fact that neither the losing nor the gaining activity has authorized reimbursement of MEA does not affect claimant's entitlement to reimbursement.

² The agency's position in the instant case also relies on provisions of the JTR.

The Agency Must Determine the Amount to Be Reimbursed

Claimant has requested MEA reimbursement in the amount of \$4092.85³ for pet transportation, based upon an itemized invoice received from the transporter. Because claimant is seeking an amount in excess of what is known as “flat MEA” by submission of an itemized invoice, regulations in the FTR and JTR govern the calculation,⁴ which is determined by whether the employee is traveling with or without dependents and the employee’s basic gross pay. Claimant traveled with his immediate family members, but we do not know his basic gross pay. The agency must determine the amount to be reimbursed, based upon claimant’s circumstances, pay grade, and regulatory limits.

Decision

Claimant is entitled to reimbursement for MEA. We remand this matter to the agency to determine the amount.

Allan H. Goodman

ALLAN H. GOODMAN

Board Judge

³ Claimant states that the amount claimed is the total paid in euros converted to U.S. dollars, using the exchange rate on the day the expense was incurred.

⁴ The relevant regulations in the FTR are sections 302-16.102 (“What amount may my agency reimburse me for miscellaneous expenses?”) and 302-16.103 (“May I claim an amount in excess of that prescribed in § 302-16.102?”). In response to Board inquiries, the agency has cited additional relevant regulations in the JTR – sections 054102-B, table 5-81 at row 1.m, and 054103-A. The agency also quotes from the Defense Finance Accounting Service’s PCS MEA page, which references the Department of State Standardized Regulation 242.1b(2), which states that when the employee provides itemized receipts, reimbursement is based on the employee’s salary at the time of entrance on duty at the new post and capped as follows: “for an employee with family – an amount based on actual allowable itemized expenditures not to exceed two weeks’ salary for the employee or two weeks’ salary for an employee at GS-13, step 10, whichever is the lesser amount.”