

# Board of Contract Appeals

General Services Administration  
Washington, D.C. 20405

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February 15, 2001

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GSBCA 15319-RELO

In the Matter of JOHN B. SMITH

John B. Smith, Dale City, VA, Claimant.

John S. Albanese, Senior Counsel, Washington Headquarters Services, Department of Defense, Washington, DC, appearing for Department of Defense.

**WILLIAMS**, Board Judge.

Claimant has appealed the agency's denial of reimbursement for certain relocation expenses on the ground that he was a "new appointee" and not an "employee" entitled to such benefits. The agency is correct. Although claimant had been on active duty with the United States Army until some eight months before he accepted a civilian position with the Department of Defense (DOD), On-Site Inspection Agency (OSIA), his status while on active duty with the Army did not qualify him as an "employee" entitled to relocation benefits.

## Background

Effective January 25, 1993, claimant, John B. Smith, accepted a position with OSIA in Virginia. At that time he had been honorably discharged from the Army and was residing in Oklahoma. Mr. Smith's prior civilian service with the United States Government had ended in 1979. However, he subsequently had served on active duty in the United States Army from June 27, 1980, until 1992.

Claimant executed a transportation agreement with the DOD on January 22, 1993, and agreed to remain in Government service for twelve months. Claimant sought reimbursement for the relocation expenses he incurred in transferring from Oklahoma to Virginia. The agency denied payment for the following expenses on the grounds that claimant was not an employee but a new appointee not entitled to them:

- A. Per diem for family
- B. Cost of househunting trip

- C. Subsistence while occupying temporary quarters
- D. Miscellaneous expense allowance
- E. Residence sale and purchase expense
- F. Lease breaking expenses
- G. Location services

### Discussion

The issue before us is whether a former active-duty officer with the United States Army is to be considered an "employee" or a "new appointee" for purposes of relocation benefits upon accepting employment as a civilian DOD employee. This precise issue has been addressed by the Comptroller General in Dr. Albert B. Deisseroth, 62 Comp. Gen. 462 (1983). The Comptroller General determined that such an individual would be considered a new appointee. He explained that members of the uniformed service are not embraced by the travel and relocation reimbursement authority of 5 U.S.C. §§ 5721-5733, which is applicable to civilian employees of the Government only. Therefore, the Comptroller General ruled that at the time of his move Dr. Deisseroth, who had just separated from the uniformed services and was recruited to work in a Veterans Administration hospital, was not covered by the real estate expenses reimbursement authority for civilian employees contained in 5 U.S.C. § 5724a.

The current statutory definitions have not substantively changed since the Deisseroth decision. Title 5 U.S.C. § 2105 (1994), in pertinent part, defines "employee" as follows:

(a) For the purpose of this title, "employee", except as otherwise provided by this section or when specifically modified, means an officer and individual who is--

(1) appointed in the civil service by one of the following acting in an official capacity--

- (A) the President;
- (B) a Member or Members of Congress, or the Congress;
- (C) a member of a uniformed service;
- (D) an individual who is an employee under this section;
- (E) the head of a Government controlled corporation; or
- (F) an adjutant general designated by the Secretary concerned under section 709(c) of title 32;

(2) engaged in the performance of a Federal function under authority of law or an Executive act; and

(3) subject to the supervision of an individual named by paragraph (1) of this subsection while engaged in the performance of the duties of his position.

(Emphasis added.)

Title 5 U.S.C. § 5721 modified the definition of "employee" for purposes of Subchapter II, Chapter 57, Title 5 of the United States Code (Travel and Transportation Expenses; New Appointees, Student Trainees, and Transferred Employees) by stating that this term means "an individual employed in or under an agency." However, this must be read with the definition in 5 U.S.C. § 2105 that to be "employed" means to be "appointed in the civil service." Thus, even though Mr. Smith was "in or under an agency" while he was on active duty with the Army, he had not been appointed in the civil service and was not "employed" in or under that agency.

Mr. Smith left civilian Government service in 1979. Accordingly, when he received an offer of employment with OSIA in 1993, he was not at that time an "employee," and could not benefit from those allowances meant for "employees" such as travel and transportation expenses under 5 U.S.C. § 5724. Because he was not an "employee" at the time of the offer of a position with OSIA, he was properly treated as a new appointee for purposes of relocation expenses. Deisseroth. As in the Deisseroth case, we are aware of no authority which exists to reimburse the claimant for the expenses at issue.

By statute and regulation, only certain, limited expenses may be authorized in connection with the relocation of a new appointee. Agencies are authorized to reimburse the travel and transportation expenses of a new appointee and his or her immediate family, the transportation expenses of household goods and personal effects, and the cost of shipping a privately owned motor vehicle, from the place of residence at the time of selection to the initial duty station. 5 U.S.C. § 5723 (1994). The Federal Travel Regulation similarly provides for the payment of the foregoing expenses, 41 CFR 302-1.1(a) (1993), and makes clear that other expenses, such as the cost of a house-hunting trip, subsistence while occupying temporary quarters, residence sale and purchase expenses, and lease-breaking costs may not be reimbursed for new appointees. 41 CFR 302-1.10(f); see Debra Jo Dyer, GSBCA 15411-RELO (Feb. 8, 2001); Karen R. Brown, GSBCA 14871-RELO, 99-2 BCA ¶ 30,429; Charles G. Bakaly, III, GSBCA 14750-RELO, 99-1 BCA ¶ 30,249, reconsideration denied, 99-1 BCA ¶ 30,367.

### Decision

The claim is denied.

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MARY ELLEN COSTER WILLIAMS  
Board Judge