

# Board of Contract Appeals

General Services Administration  
Washington, D.C. 20405

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February 27, 2001

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GSBCA 15346-RELO

In the Matter of BARRY McGUIRE

Barry McGuire, Odenton, MD, Claimant.

R.W. Welcher, Deputy Director for Finance, Defense Finance and Accounting Service, Rome, NY, appearing for Department of Defense.

NEILL, Board Judge.

This claim has been submitted to us by the Defense Finance and Accounting Service (DFAS). The claimant, Mr. Barry McGuire, was incorrectly advised by a local United States Army personnel office that, as a new hire, he would be entitled to reimbursement of certain real estate expenses incurred in conjunction with his new assignment. When Mr. McGuire presented a claim, DFAS rejected it on the ground that, as a new hire, Mr. McGuire is not eligible for the benefit he now seeks. To its credit, the local personnel office regrets its error and has asked that DFAS reconsider its denial. DFAS has forwarded the claim to this Board for review. We affirm the denial of Mr. McGuire's claim.

## Background

On August 19, 1999, Mr. McGuire was issued orders for first duty travel to Fort Meade, Maryland, where he had accepted a position with the recycling center of the post's Directorate of Public Works. Unfortunately, his orders incorrectly advised Mr. McGuire that he would be reimbursed real estate expenses incurred in conjunction with his new assignment. Shortly thereafter, Mr. McGuire and his wife sold their home in Toney, Alabama, and moved to the Fort Meade area in Maryland. Mr. McGuire then submitted a claim for reimbursement of real estate expenses incurred in the sale of his home in Alabama. The DFAS operating location in Rome, New York, returned the claim and advised Mr. McGuire that under the Joint Travel Regulations (JTR), to which he is subject as an employee of the Department of Defense, first duty station appointees are not authorized reimbursement for selling and buying residences.

The chief of the Civilian Personnel Advisory Center at Fort Meade promptly asked the DFAS office to reconsider its denial of Mr. McGuire's claim. She pointed out that the position to which Mr. McGuire had been appointed had been vacant for some time and had

proven difficult to fill in view of an on-going commercial activity study which could lead to this and related work being done in the future by a commercial contractor. Relocation and real estate expenses had, therefore, been offered as an inducement to applicants interested in the position. Although recognizing that, under the JTR, the claimant is ineligible for the real estate benefits, the chief of the personnel office nevertheless asked that DFAS reconsider its ruling. She was concerned that the claimant would suffer undue hardship owing to an oversight on the part of her office and the Directorate of Public Works. In his own written comments submitted to the Board, Mr. McGuire confirms that this matter has caused undue hardship to himself and his family and that he would never have accepted his position at Fort Meade if he had known then that he was not eligible under the JTR to recover these real estate expenses.

Rather than respond directly to the personnel office's request for reconsideration, DFAS has forwarded Mr. McGuire's claim to us for review.

### Discussion

By statute only certain, limited expenses may be authorized in connection with the relocation of a new hire or 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 & Supp. V 1999). New appointees, however, are not entitled to reimbursement of certain other expenses allowable to transferees, such as per diem for family members, cost of a house-hunting trip, expenses of subsistence while occupying temporary quarters, miscellaneous expense allowance, and residence sale and purchase expenses. Id. § 5724a (Supp. V 1999).

Regulations implementing these statutes likewise reflect the limitations on reimbursable travel and relocation expenses for new appointees to positions. The JTR expressly exclude new appointees, who like Mr. McGuire have been assigned to a first permanent duty station, from receiving any allowances for real estate transactions. JTR C14001-1. A similar provision appears in the Federal Travel Regulation (FTR). 41 CFR 301-1.10(f) (1999) (FTR 301-1.10(f)). On several occasions we have denied the claims of new appointees based upon these regulatory restrictions. E.g., John B. Smith, GSBCA 15319-RELO (Feb. 15, 2001); Debra Jo Dyer, GSBCA 15411-RELO (Feb. 8, 2001); Mukesh Nigam, GSBCA 15140-RELO, 00-1 BCA ¶ 30,821; Wendy Castineira, GSBCA 15092-RELO, 00-1 BCA ¶ 30,740 (1999); 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.

The request of Mr. McGuire's personnel office that we overlook these restrictions and grant the claim in view of the particular circumstances of this case is obviously well intentioned but it is also unfortunately misdirected. The claimant's travel orders did, in fact, authorize real estate expenses. Such authorization, however, is of no effect since it is clearly contrary to statute and regulation. It is well established that the Government simply may not authorize the payment of money in violation of statute or regulation. Kevin S. Foster,

GSBCA 13639-RELO, 97-1 BCA ¶ 28,688 (1996) (citing Office of Personnel Management v. Richmond, 496 U.S. 414 (1990); Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947)). Payment, in the absence of proper authorization, cannot be justified solely by the fact that a claimant may have relied in good faith on an improper authorization to his or her detriment. While it may seem grossly unfair that a claimant cannot be paid under these circumstances, it must be recognized that the overriding concern in such cases is the protection of the taxpayers' interest in not having unlawful disbursement made from public funds. See Patricia A. Tobin, GSBCA 14483-RELO, 98-1 BCA ¶ 29,663.

The agency's denial of Mr. McGuire's claim is, therefore, affirmed.

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EDWIN B. NEILL  
Board Judge