

Board of Contract Appeals

*General Services Administration
Washington, D.C. 20405*

February 16, 2001

GSBCA 15362-RELO

In the Matter of KEATING L. SMITH

Keating L. Smith, FPO Area Europe, Claimant.

Brenda L. Horne, Atlantic Division, Naval Facilities Engineering Command, Department of the Navy, Norfolk, VA, appearing for Department of the Navy.

NEILL, Board Judge.

Pursuant to 31 U.S.C. § 3529 (Supp. IV 1998), the Commander of the Atlantic Division of the Naval Facilities Engineering Command asks our opinion regarding the propriety of paying an employee's claim based upon the foreign transfer allowance (FTA). We conclude that under the terms of the applicable regulation, which in this case is the Department of State's Standardized Regulations (DSSR), the employee is ineligible for the allowance.

Background

In February 2000, Mr. Keating L. Smith, a civilian employee of the Department of Defense, completed a two year tour of duty as a supervisory general engineer for the United States Army in Saudi Arabia. Before completing his tour, he agreed to accept a similar position with the Department of the Navy in Keflavik, Iceland.

In January 2000, two separate travel orders were issued to Mr. Smith. One set of orders was issued by the Consolidated Civilian Personnel Office in Saudi Arabia. Under these orders, Mr. Smith was authorized to travel from Riyadh in Saudi Arabia to his home of record (HOR) in Charleston, South Carolina. The orders did not state that the purpose of this travel was "return from overseas for separation" but rather was for "travel between official stations." This first set of orders also authorized FTA, miscellaneous expenses, and the transfer of Mr. Smith's household goods (not to exceed 4500 pounds) from Riyadh to Keflavik.

Mr. Smith's second set of orders was issued by the Human Resource Service Center, Europe. Under these orders, Mr. Smith was authorized to travel from his HOR in Charleston, South Carolina, to Keflavik, Iceland. Just as the prior set of orders had provided, these orders were also issued for the purpose of "travel between official stations." The orders

authorized miscellaneous expenses, shipment of a personally owned vehicle, and transfer of household goods (not to exceed 18,000 pounds). In addition, this second set of orders authorized FTA subsistence expense for up to ten days before leaving the United States.

In commenting on the agency submission in this case, Mr. Smith explains that officials at the Human Resource Service Center advised him that the Navy would not pay for his travel from Riyadh to Keflavik because the Army was obliged to pay the cost of his travel back to his HOR upon completion of his tour in Saudi Arabia. Furthermore, the Navy apparently considered it essential for Mr. Smith to return to his HOR prior to starting his tour at Keflavik. While in Saudi Arabia, Mr. Smith had been provided with a Government vehicle and household furnishings. He was told, however, that the Navy would not provide a vehicle or furnishings for him in Iceland and that purchase of these items in Iceland was not practical. He was, therefore, advised to bring his own vehicle and furnishings with him from the United States.

Mr. Smith followed the advice received from the Human Resources Service Center. On return to Charleston, he promptly purchased a new vehicle for shipment, made selections from his household goods already in storage there for shipment to Keflavik, and purchased some additional furnishings for shipment. At the same time, he arranged for the continued lease of his permanent residence in Charleston. Mr. Smith arranged all these matters during a short seven-day stay in Charleston before traveling on to Keflavik. During this brief period, he lodged at a local motel. The Navy tells us that Mr. Smith is seeking reimbursement for the costs of his stay in Charleston as FTA predeparture subsistence expenses. The agency questions whether the claimant is eligible for this allowance in view of specific wording in the applicable DSSR provision.¹

Discussion

The DSSR defines FTA as:

an allowance under 5 U.S.C. 5924(2)(A) for extraordinary, necessary and reasonable expenses, not otherwise compensated for, incurred by an employee incident to establishing him or herself at any post of assignment in a foreign area, including costs incurred in the United States . . . prior to departure for such post.

DSSR § 241.1(a).

One of the components of the FTA is the "predeparture subsistence expense portion." This is applicable to lodging, meals (including tips), laundry, cleaning and pressing expenses

¹In commenting on the agency's inquiry to us, Mr. Smith mentions other claims which he has with his agency regarding his transfer to Keflavik. These matters, however, are not before us at this time. Rather, this opinion is intended to serve only as a response to the specific inquiry submitted by the agency.

in temporary quarters for the employee and each member of the employee's family.² Section 241.2.c. of the DSSR expressly states that this portion of the allowance is available "for up to 10 days before final departure from a post in the United States to a post in a foreign area" The DSSR further provides: "The amount of predeparture subsistence expense granted to an employee for expenses in departing a post in the United States for a post in a foreign area shall be determined according to the maximum per diem rate for the U.S. locality from which transferred" DSSR § 242.3.

Finally, the "ten days" referred to in the DSSR may be spent anywhere in the United States "as long as [the] employee or family members have not begun travel on orders and final departure is from the U.S. post of assignment." *Id.* § 242.3.c. This last provision is the one which is of particular concern to the agency so far as Mr. Smith's claim for predeparture subsistence expenses is concerned. The concern appears to be two-fold. First, Mr. Smith, upon arrival in Charleston, had already, according to the agency, "begun travel on orders." Second, his final departure from Charleston was not from a "United States post of assignment."

In commenting on the agency's submission to us, Mr. Smith addressed the agency's first concern in some detail. He points out that because he was required to return first to Charleston before going to Keflavik, he ended up with two sets of orders which were "complete and independent of each other." Mr. Smith perceives the condition in the DSSR regarding the start of "travel on orders" as referring to his travel to Keflavik from Charleston pursuant to his second set of orders. This travel had not, in fact, begun while he was still lodged in Charleston. Technically, the argument may have some merit. It is not, however, sufficient to defeat the agency's second concern, namely, that Mr. Smith's final departure was not from a United States post of assignment.

In response to this second concern of the agency, Mr. Smith notes that neither set of orders actually transferred him from Riyadh to Keflavik. Rather, in his opinion, the first transferred him from Riyadh to Charleston, while the second transferred him from Charleston to Keflavik. Presumably, Mr. Smith is of the opinion that Charleston, for the short duration of his seven-day stay, became in fact his "United States post of assignment" -- from which he made his final departure upon leaving for Keflavik.

Nothing in either set of orders issued to Mr. Smith supports this second line of argument. In each case, the purpose of the authorized travel is for "travel between stations," and Charleston is not recognized in these orders either as his new or his former post of assignment but solely as his HOR. As already seen, the DSSR provisions relating to FTA speak repeatedly of the employee's departure from his or her post in the United States. We, therefore, conclude that, notwithstanding the authorization in both sets of orders issued to

²Predeparture subsistence allowance is similar in purpose to the allowance for temporary quarters subsistence expenses prescribed by the General Services Administration in the Federal Travel Regulation, under another statute, for employees transferring within the United States. 5 U.S.C. § 5724a(c) (Supp. IV 1998); 41 CFR pt. 302-5 (2000).

Mr. Smith, there is nothing in the Department of State's regulations implementing the provisions of 5 U.S.C. § 5924(2)(A) (1994) which would permit payment of the subsistence expenses he incurred in Charleston from a foreign transfer allowance. We find nothing in these regulations which indicates or even suggests that the predeparture subsistence allowance portion of the FTA is available to civilian employees visiting briefly at their HOR in the United States while en route between duty stations located outside the continental United States.

EDWIN B. NEILL
Board Judge