

# Board of Contract Appeals

General Services Administration  
Washington, D.C. 20405

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September 28, 2000

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GSBCA 15381-RELO

In the Matter of LOUIS DAVID CARTER

Louis David Carter, Sequim, WA, Claimant.

John J. Blickley, Chief, Office of Financial Management, United States Geological Survey, Department of the Interior, Reston, VA, appearing for Department of the Interior.

**BORWICK**, Board Judge.

In this matter, claimant, Mr. Louis David Carter, a former employee of the Department of the Interior, United States Geological Survey (agency) in Anchorage, Alaska, challenges the agency's determination that in its travel order it had erroneously granted claimant full relocation benefits for return to the continental United States (CONUS) upon his retirement. Claimant, allegedly relying on the travel order, incurred \$40,373.24 of relocation expenses which the agency paid. The agency later determined that this amount would have to be returned, absent the granting of a waiver by the agency.

The agency correctly determined that it had overpaid claimant. It had erroneously determined that claimant was entitled to those relocation benefits prescribed by the Federal Travel Regulation (FTR) provision applicable to the "last move home" of members of the Senior Executive Service (SES), but claimant was not in the SES. We reject claimant's argument that he is entitled to relocation benefits available to employees assigned to a temporary change of station (TCS) since Anchorage, Alaska, was claimant's permanent official station. Claimant is entitled to travel and transportation expenses equivalent to those available to new appointees. We return this matter to the agency so that it may determine the extent of claimant's entitlement under the correct statutory and regulatory provisions.

Claimant's request for waiver is premature since the agency must recalculate claimant's entitlement and it has not yet established the debt. Also, waiver is a matter within the exclusive province of the agency, not this Board.

The facts are as follows. On May 29, 1998, the agency issued to claimant a travel authorization for claimant's separation travel, due to his retirement, from his official station

in Anchorage, Alaska, to Eugene/Roseburg, Oregon. The authorization stated that claimant was entitled to en route travel and transportation for claimant and his immediate family; temporary quarters subsistence expenses (TQSE) for a period not to exceed thirty days, less days used for a house-hunting trip; real estate transaction expenses or the services of a relocation services contractor; miscellaneous moving expenses; non-temporary storage of household goods (HHG); cost of moving HHG; and a relocation income tax allowance.

Allegedly relying upon the travel voucher, claimant incurred \$4007.99 for a house-hunting trip including airfare; \$3281.25 for temporary quarters subsistence expenses and miscellaneous expense allowance; \$9000 for an unexplained item entitled "real estate incentive"; and \$24,084 for the services of a relocation management company, for a total of \$40,373.24. The agency reimbursed claimant for those expenses.

After reimbursement, claimant wrote the agency and questioned the agency's calculation of the amount of the withholding tax allowance reported as taxable income. This inquiry caused the agency to completely re-evaluate claimant's entitlements. The agency, relying on 41 CFR 302-1.104 (1997), concluded that in its travel authorization it had erroneously granted claimant entitlement to reimbursement of expenses for family per diem, house-hunting trip, TQSE, miscellaneous expense allowance, residence sale and purchase expenses, non-temporary storage of HHG, relocation income tax allowance, and relocation services. The agency recalculated the voucher and determined that claimant owed the agency the \$40,373.24 for which claimant had been reimbursed. Relying on 41 CFR 302-1.103, the agency concluded that claimant was entitled to reimbursement of travel expenses, including expenses for claimant, transportation but not per diem for claimant's immediate family, mileage allowance to the extent that travel was performed by privately-owned automobile, and transportation and temporary storage of HHG not to exceed 18,000 pounds net weight. Using this criterion, the agency determined that claimant was entitled to \$1006.60 of incurred expenses.

The agency advised claimant that it would allow claimant "to have these calculations reviewed by GSA." If GSA determined that claimant had been improperly reimbursed, the agency would bill claimant for the appropriate amount, and explain claimant's right to seek a waiver of the debt. Claimant thereupon filed a claim at this Board.

Claimant states that he was not a member of the SES, a fact which the agency does not dispute. Claimant argues that in determining his entitlements, the agency erroneously applied that portion of the FTR dealing with last move home benefits for members of the SES. Based on his reading together of 41 CFR 302-1.12, -1.223 and -1.224, claimant argues that he is entitled to full relocation benefits and that the agency's reimbursement of \$40,373.24 was proper.

The agency correctly decided that its travel authorization was erroneous. Statute authorizes payment of per diem, TQSE, and real estate transaction expenses, as well as transportation expenses for the immediate family and movement and temporary storage of HHG, when the employee is transferred in the interest of the Government from one official station to another for permanent duty. 5 U.S.C. § 5724, 5724a (1994 & Supp. III 1997). It is settled that return travel from a duty station outside CONUS for the purpose of separation or retirement does not constitute a permanent change of station for the purpose of the statute.

Arnold Krochmal, B-213730 (Apr. 17, 1984) (citing 54 Comp. Gen. 991 (1975)). Unfortunately, good faith reliance on erroneous travel orders can not provide a basis for payment, for the Government is not bound by the acts of its agents which exceed the actual authority conferred by statute or regulation. Charles A. Smith, GSBCA 14418-TRAV, 98-1 BCA ¶ 29,422; Arnold Krochmal.

Claimant's reliance upon 41 CFR 302-1.223 and -1.224 as a basis for full relocation benefits is misplaced. Those provisions apply to employees who are in TCS status. TCS means "the relocation of an employee to a new official station for a temporary period while the employee is performing a long-term assignment, and [the] subsequent return of the employee to the previous official station upon completion of that assignment." 41 CFR 302-1.200.<sup>1</sup> It appears that Anchorage, Alaska was claimant's permanent official duty station. Claimant has not presented evidence that the agency placed him in a temporary long-term assignment in Anchorage, with the intention of returning him to a previous permanent duty station.

Claimant's travel and return travel rights are the same as to those prescribed for new appointees under 5 U.S.C. § 5722. See 5 U.S.C. § 5724(d). Claimant, as a non-SES employee, is thus entitled to the relocation benefits prescribed in 5 U.S.C. § 5722, as implemented by 41 CFR 302-1.12. Jerry U. Shimoda, GSBCA 14264-RELO, 99-1 BCA ¶ 30,170; Arnold Krochmal. These benefits are set forth in 41 CFR 302-1.12(b)(2). If alternate origins or destinations are involved, the cost which will be paid by the Government may not exceed the cost that would have been incurred between the residence at the time of assignment and the official station. 41 CFR 302-1.12(b)(4). The claim is returned to the agency for calculation of the amount to which claimant is entitled.

Claimant requests that the Board "forgive the bill." Claimant's request is premature; since the agency must recalculate claimant's entitlement under the correct provisions of statute and the FTR, and since the agency has not yet established the debt, no "bill" with the correct amount due has yet been issued. But if the agency does establish an appropriate debt, consideration of waiver is exclusively for the agency, not for this Board under its delegated authority. Gary Morris, GSBCA 15290-RELO (Aug. 16, 2000).

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ANTHONY S. BORWICK  
Board Judge

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<sup>1</sup> This provision implements 5 U.S.C. § 5737, which authorizes payment of relocation expenses for an employee, on an extended assignment of six to thirty months, to a new duty station.