

# Board of Contract Appeals

General Services Administration  
Washington, D.C. 20405

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November 22, 2000

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GSBCA 15394-RELO

In the Matter of GARY MacLEAY

Gary MacLeay, Epping, NH, Claimant.

Rebecca Tittle, Head, Appeals & Investigations, Human Resources Service Center Europe, Department of the Navy, FPO Area Europe, appearing for Department of the Navy.

**DANIELS**, Board Judge (Chairman).

When an employee being transferred from an overseas location back to the United States precedes his family home, may the family members be entitled at a later date to receive a temporary quarters subsistence allowance? This question is posed by the claim of Gary MacLeay, an employee of the Department of the Navy.

In August 1999, Mr. MacLeay, then working in London, England, was selected for a position in Portsmouth, New Hampshire. Mr. MacLeay asked to be allowed to remain in England until the following June, when his oldest son would complete high school. The Navy agreed that the employee could report to his new position in January and that his wife and children could remain in Government housing in England until June, when they would join him in New Hampshire.

Mr. MacLeay left London on January 2, 2000, and arrived in New Hampshire on the same day. In June, he returned to England at his own expense for his son's graduation. The family's household goods were picked up by movers on June 8, and the family then left Government quarters. They lived in a hotel until June 18, when they traveled by airplane to New Hampshire.

Mr. MacLeay says that a Navy Department human resources officer, on whom he relied for information about relocation allowances, promised to reimburse him for the expenses the family incurred in living in the hotel in London and eating meals while there. The agency refused to make this payment, however. Mr. MacLeay asks us to review the latter determination.

The agency and the employee agree that the payment at issue is a temporary quarters subsistence allowance (TQSA). Congress authorized agencies to pay such an allowance to compensate Federal Government employees in foreign areas who live in temporary quarters and are not provided Government owned or rented quarters without charge. 5 U.S.C. § 5923(a)(1) (1994). TQSA is available both after first arrival at a new post in a foreign area and, of relevance to this case, "immediately before final departure from the post after the necessary evacuation of residence quarters." *Id.* The rules governing TQSA are established in the Department of State Standardized Regulations (DSSR).

The Navy correctly notes that the key provision of the DSSR, for the purpose of this case, is section 124.2, "Termination." This section says that when an employee's family remains at the employee's old duty station after the employee has left, TQSA may be paid for the time the family lives in temporary quarters at the old station, but that allowance "shall not extend beyond the date preceding the date of the arrival of the new employee at the new post." DSSR § 124.2.c.

Under this rule, once Mr. MacLeay arrived at his new duty station in New Hampshire, TQSA was not available to him for living costs his family might incur while in temporary quarters in England.

If, as alleged by Mr. MacLeay, a responsible agency official promised that the agency would make payments it later refused to make, we can appreciate why the claimant is upset by the turn of events. This sort of predicament points out the need for better training of agency employees who are responsible for administering travel and relocation benefits, so that in the future, transferees are not similarly misadvised. Even if the official made the promise asserted by Mr. MacLeay, however, this cannot affect the outcome of the case at hand. As we recently wrote in Pamela A. Mackenzie, GSBCA 15328-RELO (Oct. 12, 2000):

[A]n agency may not confer power upon itself. It literally has no power to act . . . unless and until Congress confers power upon it. . . . Allowing an agency to make a payment for a purpose not authorized by statute or regulation, . . . would violate the Appropriations Clause of the Constitution. U.S. Const. art. I, § 9, cl. 7 ("No money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law.").

Teresa M. Erickson, GSBCA 15210-RELO, 00-1 BCA ¶ 30,900 (quotation marks and some citations omitted).

We have previously explained:

In considering claims like this one, . . . the arbiter must balance the harm the employee would suffer if the claim were denied against the damage which would result to our system of government if federal officials were free to spend money in ways which are contrary to the strictures of statute and regulation. In making this balance, the Supreme Court has

clearly come down on the side of protecting our system of government. We follow the Court in holding that although [the employee] has undeniably relied to his detriment on [his agency's] promises, he may not be reimbursed because the law prevents the agency from honoring commitments made in its name by officials who do not have the power to make them.

George S. Page, GSBCA 15114-RELO, 00-1 BCA ¶ 30,707 (1999); see also, e.g., George W. Currie, GSBCA 15199-RELO, 00-1 BCA ¶ 30,814; [James E.] Black[, GSBCA 14548-RELO, 98-2 BCA ¶ 29,876]; [Chesley E.] Kimbrel[, GSBCA 13680-RELO, 97-2 BCA ¶ 29,043 (1996)]; Kevin S. Foster, GSBCA 13639, 97-1 BCA ¶ 28,688 (1996).

Mackenzie, slip op. at 2-3.

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STEPHEN M. DANIELS  
Board Judge