

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

February 27, 2001

GSBCA 15463-RELO

In the Matter of ANTHONY P. BELMONT, M.D.

Anthony P. Belmont, M.D., Topsham, ME, Claimant

Judy Hughes, Travel Policy, Defense Finance and Accounting Service, Columbus, OH, appearing for Department of Defense.

BORWICK, Board Judge.

In this matter, claimant, Dr. Anthony P. Belmont, seeks relocation expenses for his move from Bartlesville, Oklahoma, to Topsham, Maine, as a new appointee at the Brunswick Naval Air Station (BNAS) in Brunswick, Maine. The Department of the Navy, agency, through the Personnel Support Attachment (PSA), Norfolk, Virginia, suspended payment of the claim. The agency determined that claimant was a resident in Topsham, Maine, when he was appointed to his position and that payment of relocation expenses from Bartlesville to Topsham would violate those provisions of statute and regulation providing for payment of expenses of a new appointee only from the appointee's place of residence at the time of selection or assignment to his or her duty station. The agency, through the Defense Finance and Accounting Service, forwarded the claim as doubtful to this Board for decision. We sustain the decision of the agency, as it correctly applied the provisions of statute and the Federal Travel Regulation (FTR) and Joint Travel Regulations (JTR).

In December 1999, claimant retired from his position as Medical Director of Phillips Petroleum Company in Bartlesville, Oklahoma, and began a search for a comfortable retirement location. Claimant identified Maine as a potential retirement site and visited Brunswick, Maine in January 2000. While there, he inquired about employment at the BNAS. According to claimant the prospect of his employment was "enthusiastically received and encouraged." There was a problem, however. The BNAS was advertising for two family practitioners; claimant was an internist and considered ineligible for the advertised positions.

Between January 25 and March 15, claimant and his family moved to Topsham, Maine, which is 1.2 miles from Brunswick. A mover carried claimant's household goods (HHG) from Bartlesville, Oklahoma, on February 25 and delivered them to his residence in

Topsham on March 15. Claimant and his spouse traveled from Bartlesville to Topsham in their privately owned vehicle (POV) between January 25 and March 14. On or about March 20, claimant flew to Bartlesville and drove his second POV to Topsham. Claimant incurred moving and transportation expenses for the shipment of his HHG and for himself and his spouse. The moving expenses totaled \$8136.41.

On March 20, 2000, the agency advertised for an internist position at BNAS. By letter of August 14, addressed to claimant at his residence in Topsham, Maine, the agency notified claimant of his selection for the internist position. In its notification the agency advised that permanent change of station (PCS) costs were also authorized, subject to claimant completing a transportation agreement.

On September 26, the agency issued a travel authorization to claimant, granting claimant PCS entitlements for new appointees, including mileage for use of two POVs, shipment of HHG by Government bill of lading (GBL), and per diem for new appointee's travel. The authorization listed Bartlesville, Oklahoma, not Topsham, Maine, as claimant's releasing station or actual official residence.

On or about October 5, 2000, claimant submitted a travel voucher for the incurred expenses. On October 11, the agency's Personnel Support Activity Detachment (PSAD), Brunswick, Maine, determined in an audit of the voucher that claimant was entitled to payment of \$13,947.56 for carriage of HHG based upon the commuted rate and to a total entitlement of \$14,823.42, adding in amounts for employee PCS per diem, dependent transportation, and other expenses. The Brunswick PSAD determined that claimant was entitled to \$14,755.29 after subtraction of taxes owed on the entitlement.

On October 18, through an e-mail message to the Brunswick PSAD, the Norfolk, Virginia, PSA questioned claimant's eligibility for reimbursement of any PCS entitlement. PSA Norfolk determined that claimant was already residing in the vicinity of Brunswick, Maine, when he received his employment offer and that he should have been treated as a local hire. The PSA maintained that claimant moved from Bartlesville, Oklahoma, to Topsham, Maine, at his own expense after he retired from private medical practice in Oklahoma. PSA Norfolk advised PSAD Brunswick that if it disagreed with that determination it could forward the matter to higher authority as a "doubtful claim."

On October 19, the agency's Human Resources Office, Groton, Connecticut, forwarded a memorandum to the Deputy Commander, Naval Ambulatory Care Center, Portsmouth, New Hampshire, recommending payment of claimant's PCS expenses to the first duty station. On November 2, PSAD Brunswick forwarded the claim to the Defense Finance and Accounting Service (DFAS) through PSA Norfolk. On November 8, 2000, PSA Norfolk forwarded the claim to DFAS recommending, in essence, rejection of the claim because claimant had relocated his household to Topsham, Maine, before the position was advertised. PSA Norfolk suspended payment of the claim pending DFAS's review and, if necessary, a final decision of this Board.

DFAS sent the claim to this Board supporting the position of PSA Norfolk:

[PSA Norfolk] does not believe the claim is payable since at the time of [claimant's] travel, a job offer didn't even exist. We have reviewed several Comptroller General Decisions that do indicate that, at the time the expenses are incurred a definite intent to transfer the employee must exist. In the absence of any evidence of the command's intent to hire the employee, we cannot find a legal basis to allow reimbursement.

Claimant seeks payment of relocation expenses as a new appointee to federal service. For new appointees, statute provides that agencies may pay certain specified travel expenses, transportation expenses and the expenses of transporting a POV "from his place of residence at the time of selection or assignment to his duty station." 5 U.S.C. § 5723 (Supp. V 1999). The FTR limits reimbursement of such expenses to "the cost of direct travel or transportation as allowable between the individual's place of residence at the time of selection or assignment . . . and the official station to which he/she is appointed or assigned." 41 CFR 302-1.10(g) (1999). The JTR is to the same effect. JTR C4051-G.

For the purpose of 5 U.S.C. § 5723, the term residence means the actual residence at the time of appointment. The JTR provides that the provisions of that part of the JTR dealing with first duty station travel "appl[y] to new appointees . . . relocating from their place of actual residence at the time of appointment . . . for permanent duty to official stations." JTR C4050-A. Actual residence is the place of physical residence at the time of selection or appointment in the absence of circumstances reasonably indicating that another location may be designated as the place of actual residence. 41 CFR 302-1.12(c)(3)(ii). In Mohammed Amin Fekrat, B-212316 (Jan. 25, 1984), reconsideration denied (June 20, 1986), the Comptroller General relied on that definition of residence in determining that a new appointee who had moved from Tehran, Iran, to Washington, D.C., six months before his appointment to a position with the Federal Government was not entitled to be reimbursed for his relocation expenses from Tehran to Washington, D.C., since Washington, D.C., not Tehran, was the new appointee's actual residence at the time of the appointment.¹ Further, there was no commitment by the Government to hire the new appointee when he was residing in Tehran.

Here, the agency, through PSA Norfolk, determined that the claim was not payable because Topsham, Maine, not Bartlesville, Oklahoma, was claimant's actual residence at the time of claimant's appointment. The agency's determination that Topsham, Maine, was claimant's actual residence was reasonable since claimant had moved from Bartlesville to Topsham about five months before the agency selected claimant for appointment.

Furthermore, we cannot conclude that there existed an agency commitment to appoint claimant when he was residing at Bartlesville because at that time there was not even an advertised position at BNAS for which claimant was qualified, much less an offer--tentative

¹ This part of the FTR implements 5 U.S.C. § 5722, which governs entitlement for new appointees to posts of duty outside the Continental United States. In Fekrat the Comptroller General used that part of the FTR as a guide to the meaning of residence for the purpose of entitlements under 5 U.S.C. § 5723. The Comptroller General's approach is reasonable and we adopt it.

or otherwise--of employment. The advertised position and offer materialized only after claimant had moved to Topsham Maine. See, e.g., Dennis A. Edwards, GSBCA 14943-RELO, 00-1 ¶ 30,741 (in transfer situation, tentative employment discussions no evidence of clear administrative intent to transfer employee).

Claimant argues that "PCS costs are authorized in the offer of employment and I expect to receive this money." This argument does not assist claimant. Reimbursement of the claimed expenses would violate statute and regulation as described above. Federal agencies may not pay monies based upon the erroneous conclusions of Government personnel as to employee entitlements when such payment would violate statute and regulation. Jeniece K. Stanfield, GSBCA 15281-RELO, 00-2 BCA ¶ 30,954; Kevin S. Foster, GSBCA 13639-RELO, 97-1 BCA ¶ 28,688 (1996). The claim is denied.

ANTHONY S. BORWICK
Board Judge