

**Board of Contract Appeals**  
General Services Administration  
Washington, D.C. 20405

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October 17, 2001

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GSBCA 15478-RELO

In the Matter of JACQUELINE BUTLER

Jacqueline Butler, Moreno Valley, CA, Claimant.

Charles Huerta, Director, Civilian Personnel Operations, Headquarters Air Force Personnel Center, Randolph Air Force Base, TX, appearing for Department of the Air Force.

**WILLIAMS**, Board Judge.

Claimant, Jacqueline Butler, a civilian employee with the Department of the Air Force (Air Force), seeks \$100,000 in travel costs, out-of-pocket expenses and damages for pain and suffering resulting from her move from California to Maryland and back. This move was prompted by the agency's erroneous selection of her for a position for which she was not qualified. Recognizing its error, the Air Force recommends that the Board reimburse Ms. Butler her roundtrip travel expenses in the amount of \$4529.18 under equitable principles even though there is no legal authority for such reimbursement.

The Board has jurisdiction only over claimant's claim for travel expenses, and all other elements of her claim are dismissed. The agency is correct that there is no legal basis for reimbursing claimant, but the Board is recommending payment as a meritorious claim under a General Services Administration pilot program.

Background

On June 14, 2000, claimant, a GS-5 civilian employee of the Air Force at March Air Force Base (AFB) in California, was notified by the civilian personnel office at Andrews AFB in Maryland that she had been selected for a GS-9 position with Andrews. The agency advertised the position at Andrews AFB as one for which no travel costs would be paid, and thus Ms. Butler received no travel orders. She voluntarily chose to assume the out-of-pocket costs associated with traveling to Maryland to accept the new job. Claimant traveled to Maryland, but, upon arrival, was notified that she was not qualified and would not be appointed. She returned to March AFB in California and resumed her old GS-5 job with that agency.

The Air Force believes that there is no legal authority to pay any portion of Ms. Butler's claim, but requests that from an equitable standpoint payment at the standard rate authorized by the Joint Travel Regulations (JTR) in the amount of \$4529.18 be authorized.

### Discussion

The agency is correct that there is no legal authority for this Board to order retroactive payment of travel expenses for a position for which no travel expenses were authorized and no travel orders issued. This Board is unable to direct the payment of public funds in a manner that is not authorized by statute or regulation. Thomas Gozzo, GSBICA 14168-TRAV, 97-2 BCA ¶ 29,290.

Nonetheless, the agency asks us to award equitable relief to Ms. Butler. Although the Board lacks authority to fashion such equitable relief, we may under a test program refer cases to the appropriate official within the General Services Administration (GSA) with our recommendation. In this test program initiated on April 28, 2000, the Administrator of General Services authorized the Board to refer claims to the GSA Deputy Associate Administrator, Office of Transportation and Personal Property (MT) if administrative relief should be granted for legal or equitable considerations, but such relief is prohibited by statutory or regulatory restrictions. Roy Katayama, GSBICA 15605-RELO (July 20, 2001). Such claims are commonly referred to as "meritorious claims." The purpose of the test program is to allow MT to achieve the same results as would be obtained if the Meritorious Claims Act, 31 U.S.C. § 3702(d) (1994 & Supp. V 1999), were utilized, but in a more efficient manner.

In the Air Force's view, although there is no legal basis for paying Ms. Butler's claim, reimbursing her would be equitable. The Air Force recognizes that Ms. Butler relied upon her notification that she was selected for this position to incur the travel expenses. As we explained in Katayama:

We will not apply a hard and fast rule when we determine whether equitable considerations compel us to conclude that a claim is meritorious. In reaching our decision, we will consider and balance several factors. At the outset, we recognize that deeming a claim "meritorious" is highly extraordinary, since Government employees are charged with knowledge of all applicable laws and regulations and are expected to comply with them. We will look to see whether the claim presents equitable considerations of an unusual nature which are unlikely to constitute a recurring problem. We will consider whether an agency directed an employee to incur the claimed expenses. We will also consider whether an agency's actions caused an employee to incur the claimed expenses. We may also consider other factors, as warranted by the circumstances presented by individual claims.

Applying this standard in the instant case, we conclude that this is one of those "highly extraordinary" cases which warrants our conclusion that the claim is meritorious and our recommendation that claimant be granted the limited relief recommended by the agency. The agency's error in this case goes beyond the typical inadvertent error in a travel authorization or erroneous interpretation of a travel or relocation entitlement. The agency offered

Ms. Butler a position which it was not authorized to offer her and caused claimant to disrupt her life and travel across the country only to be told she was not entitled to the position, through no fault of her own. In our view, an agency error of this character is extraordinary and unlikely to recur. Although the agency here did not "direct" the employee to incur the claimed expenses, it caused her to incur the expenses based upon the representation that she would be receiving a promotion. Cf. Joseph A. Curtis, GSBCA 13823-RELO, 97-1 BCA ¶ 28,935 (meritorious claim referral where expenses were incurred due to claimant's erroneous selection for a position).

### Decision

We refer the portion of this claim which seeks travel expenses to the GSA Deputy Associate Administrator, Office of Transportation and Personal Property, with our recommendation that it be paid in the amount of \$4529.18. The claims for damages for pain and suffering and out-of-pocket expenses are not within the Board's jurisdiction, are not encompassed by our referral, and are dismissed for lack of jurisdiction.

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MARY ELLEN COSTER WILLIAMS  
Board Judge