

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

July 20, 2001

GSBCA 15605-RELO

In the Matter of ROY KATAYAMA

Roy Katayama, Washington, DC, Claimant.

J. F. Drummond, Jr., Finance & Operations Law Office, Office of General Counsel, Environmental Protection Agency, Washington, DC, appearing for Environmental Protection Agency.

DeGRAFF, Board Judge.

In July 1999, the Environmental Protection Agency (EPA) interviewed Roy Katayama for a position in its Washington, D.C., office. Mr. Katayama lived in California and was not employed by the Federal Government. The person who interviewed Mr. Katayama told him that if he moved to Washington to work for the EPA, the agency would reimburse his subsistence expenses for ten days while he occupied temporary quarters. Subsequently, the EPA selected Mr. Katayama for the position in its Washington office and in August 2000, provided him with a travel authorization. The first page of the authorization showed that Mr. Katayama would travel to Washington from August 30 through September 8, and that he would be reimbursed for lodging, meals, and incidental expenses while en route. On the second page of the authorization, the box next to "Temporary Quarters" was not checked and no dollar amount was shown for that item.

Mr. Katayama stayed in temporary quarters in Washington for twelve days and incurred approximately \$2200 in subsistence expenses during that time. Although less expensive temporary quarters were available to him, Mr. Katayama did not pursue those quarters because he believed that the EPA would reimburse his expenses, as he had been told during his interview. Statute and regulation, however, do not allow agencies to reimburse new appointees for their temporary quarters subsistence expenses. 5 U.S.C. § 5723 (Supp. V 1999); 41 CFR 302-1.10(f) (1999); Barbara A. Caviness, GSBCA 15390-RELO (June 11, 2001). Mr. Katayama submitted a claim for reimbursement of his temporary quarters subsistence expenses and the EPA disallowed the claim.

The EPA asks us to recommend that the General Services Administration's Deputy Associate Administrator, Office of Transportation and Personal Property (MT), grant

administrative relief to Mr. Katayama. In a test program initiated on April 28, 2000, the Administrator of General Services authorized the Board to refer claims to MT if administrative relief should be granted for legal or equitable considerations, but such relief is prohibited by statutory or regulatory restrictions. 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 it would 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 EPA's view, although there is no legal basis for paying Mr. Katayama's claim, reimbursing him would be equitable. The EPA explains that as a new federal employee, Mr. Katayama was not familiar with the rules regarding reimbursement, and he relied upon the statement made during his interview that the agency would reimburse his temporary quarters subsistence expenses.

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 decisions, 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.

We conclude that it is not appropriate to recommend that MT grant administrative relief to Mr. Katayama. Many travel and relocation claims are founded upon allegations that employees received erroneous advice from their agencies. The EPA did not direct Mr. Katayama to occupy temporary quarters and to incur the resulting expenses. There is nothing in our record to show that the interviewer's statement regarding temporary quarters subsistence expenses caused Mr. Katayama to accept the position in Washington and to incur the claimed expenses. The amount at issue is large, but it would have been less if Mr. Katayama had pursued available, less expensive quarters. In short, there is nothing that makes Mr. Katayama's claim extraordinary.

Although it is unfortunate that the person who interviewed Mr. Katayama provided him with erroneous advice, the circumstances presented here are not so compelling as to prompt us to refer the claim to MT for relief.

MARTHA H. DeGRAFF
Board Judge