

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

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February 11, 2002

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GSBCA 15693-RELO

In the Matter of CHARLES P. COOLURIS

Charles P. Cooluris, Carlsbad, CA, Claimant.

Frederick R. Sciulli, Regional Counsel, Fleet and Industrial Supply Center, Department of the Navy, San Diego, CA, appearing for Department of the Navy.

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

When the Department of the Navy transferred Charles P. Cooluris from California to Japan, it told him that it would pay the costs of storing his privately-owned vehicle in a commercial facility while he was overseas. Mr. Cooluris put his vehicle in such a facility, but when he asked the agency to reimburse him for storage expenses, payment was refused. Mr. Cooluris asked us to review the Navy's determination not to cover his storage costs. We affirmed the agency's decision, since payment is not authorized by statute or regulation and agency employees' bad advice that a cost will be paid does not create an entitlement where none lawfully exists. Charles P. Cooluris, GSBCA 15355-RELO, 00-2 BCA ¶ 31,136 (relying on Teresa M. Erickson, GSBCA 15210-RELO, 00-1 BCA ¶ 30,900).

Mr. Cooluris now asks that a recommendation be made to Congress, pursuant to the Meritorious Claims Act, 31 U.S.C. § 3702(d) (Supp. V 1999), that his claim be considered worthy of favorable consideration by the legislature. The Navy supports this request.

The Board has not been delegated authority to make recommendations to Congress pursuant to the Meritorious Claims Act. William Archilla, GSBCA 13878-RELO, 97-1 BCA ¶ 28,799. The General Services Administration (GSA) has provided, however, for Board involvement in a test program which GSA believes will allow it to achieve the same results as would be obtained through the Act. The test program is conducted pursuant to authority vested in the Administrator of General Services by 5 U.S.C. § 5739 (2000). The program empowers GSA's Deputy Associate Administrator, Office of Transportation and Personal Property, to grant administrative relief of claims which cannot be paid due to statutory or regulatory restrictions, but ought to be honored for equitable reasons. The Board may forward to the Deputy Associate Administrator those claims which it deems appropriate for payment under the test program. Roy Katayama, GSBCA 15605-RELO, 01-2 BCA ¶ 31,542.

We have established these guidelines for review of a claim submitted to us for favorable treatment under the test program:

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.

Katayama, 01-2 BCA at 155,714.

In implementing these guidelines, we have been persuaded that employees who were issued travel orders, incurred costs to comply with those orders, and then had the orders canceled – thereby causing the money spent to have been wasted – are particularly deserving of being reimbursed by their agencies. The costs involved were not covered by travel statutes or regulations, and because of the agencies' actions, the employees derived no benefit from having incurred the costs. Noreen Kinnavy, GSBCA 15513-RELO (Jan. 25, 2002); Jacqueline Butler, GSBCA 15478-RELO (Oct. 17, 2001); Terry M. Neeley, GSBCA 14930-RELO, 99-2 BCA ¶ 30,496; Joseph A. Curtis, GSBCA 13823-RELO, 97-1 BCA ¶ 28,935. On the other hand, where employees have incurred the costs at issue in a claim because of personal decisions which conferred benefits on those employees, we have not considered the claims meritorious. Joe J. Puckett, GSBCA 15563-RELO (Aug. 9, 2001); Daniel C. Schofield, GSBCA 15531-RELO, 01-2 BCA ¶ 31,560; David C. McCord, GSBCA 14944-RELO, 99-2 BCA ¶ 30,505.

The case most closely resembling the one before us now is Katayama. There, an individual newly-appointed to federal service had been informed by the hiring agency that once he reported for duty, the agency would reimburse subsistence expenses he incurred for ten days while he occupied temporary quarters. The employee stayed in temporary quarters and presented the agency with the bill for doing so. At that point, agency officials realized that the law did not allow the agency to reimburse a new appointee for these expenses, so they rejected his claim. The Board recommended that GSA not grant administrative relief to the claimant. We considered the case unexceptional in that many travel and relocation claims result from an employee's reliance on erroneous advice from his agency. We also thought it important that the law on the matter was clear and the agency did not direct the employee to occupy the temporary quarters.

As in the Katayama case, the claim here results from the all-too-common occurrence of an employee's following advice which agency officials had no authority to give. The law on the matter is clear and the agency did not direct the employee to incur the costs at issue. Furthermore, again like the claimant in Katayama, the employee here derived a benefit from

the money he spent – here, having his vehicle protected in storage for many months, so that it would be available to him when he returned from overseas. The only real question is whether the Government should pay for that benefit, and as we explained when this claim was before us earlier, the writers of relevant statutes and regulations have decided that this question should be answered in the negative. That determination should not be lightly cast aside.

Although it is unfortunate that Mr. Cooluris was told that the Navy would pay for a cost the agency may not cover, we do not think his situation is so compelling as to merit recommending to GSA that it grant extraordinary administrative relief.

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STEPHEN M. DANIELS  
Board Judge