

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

October 9, 2003

GSBCA 16244-RELO

In the Matter of JEROME A. DOSDALL

Jerome A. Dossdall, Huntsville, AL, Claimant.

Judy Hughes, Travel Pay Services, Defense Finance and Accounting Service, Columbus, OH, appearing for Defense Contract Management Agency.

PARKER, Board Judge.

Background

In July 2001, the Defense Contract Management Agency hired as a new Government employee Jerome A. Dossdall. Mr. Dossdall was provided with travel orders that authorized him, among other things, allowances for the sale of his old residence in Powder Springs, Georgia, and purchase of a new one in Huntsville, Alabama. The orders also authorized payment of temporary quarters subsistence expenses (TQSE) and temporary storage of his household goods.

At some point, the agency realized that it had mistakenly authorized Mr. Dossdall some allowances that are not permitted by law for newly-hired employees. By that time, however, Mr. Dossdall had already been advanced \$8286.64 for TQSE. The agency waived repayment of this amount.

Mr. Dossdall claims that the agency is also obligated to reimburse him for expenses incurred in connection with the sale of his old residence (\$12,271.54) and the purchase of his new one (\$3775.50). In addition, Mr. Dossdall claims \$2045.12 in expenses incurred for temporary storage of his household goods beyond the 180-day period provided by law. The additional storage expenses were incurred because the sale of Mr. Dossdall's old residence took longer than expected. Finally, Mr. Dossdall claims \$300 in attorney fees, presumably for helping him file this claim.

Discussion

Although the agency did Mr. Dossdall a disservice by authorizing reimbursements that

it had no power to authorize, the agency is correct that Mr. Dosedall's claims must be denied. By statute, a new appointee to federal service is entitled to certain benefits when he moves to his duty station from his place of residence at the time of appointment. 5 U.S.C. §§ 5722, 5723 (2000). These benefits are similar to those provided to an employee whom an agency transfers in the interest of the Government from one duty station to another, *id.* §§ 5724, 5724a, but they are not identical. Agencies are authorized to reimburse the travel and transportation expenses of a new appointee and his or her immediate family, the transportation and temporary storage expenses of household goods and personal effects, and the cost of shipping a privately owned motor vehicle from the place of residence at the time of selection to the initial duty station. *Id.* § 5723. The Federal Travel Regulation (FTR) similarly provides for the payment of the foregoing expenses, 41 CFR 302-1.10(a), (e) (2001), and makes clear that other expenses, such as subsistence while occupying temporary quarters and residence sale and purchase expenses, may not be reimbursed for new appointees. *Id.* 302-1.10(f); Karen R. Brown, GSBCA 14871-RELO, 99-2 BCA ¶ 30,429; Charles G. Bakaly, III, GSBCA 14750-RELO, 99-1 BCA ¶ 30,249, reconsideration denied, 99-1 BCA ¶ 30,367. These regulations have the force and effect of law.

Unfortunately, Mr. Dosedall's travel orders mistakenly authorized TQSE and reimbursement of real estate expenses. The agency has waived the debt for repayment of the erroneously-paid TQSE expenses, so that is not an issue before us. The waiver did not cover the real estate expenses that were incurred by Mr. Dosedall because these expenses were never paid by the agency. Mr. Dosedall maintains that the expenses should be reimbursed based on a contractual commitment.

The fact that claimant's travel orders erroneously authorized reimbursement of these expenses did not create a contractual right to reimbursement. In similar situations, we have consistently followed the Supreme Court's direction that the Government cannot be held to its representatives' promises when they are contrary to law; subjecting the Government to estoppel in these circumstances would allow it to spend money in ways which have been forbidden by Congress. *E.g.*, Louise C. Masse, GSBCA 15684-RELO, 02-1 BCA ¶ 31,694 (2001) (citing Office of Personnel Management v. Richmond, 496 U.S. 414 (1990); Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947)). It is well established that travel orders which erroneously authorize relocation expenses to which a new employee is not entitled cannot create a right to reimbursement in excess of the statutory and regulatory entitlements. Wendy Castineira, GSBCA 15092-RELO, 00-1 BCA ¶ 30,740; William Archilla, GSBCA 13878-RELO, 97-1 BCA ¶ 28,799. This is true regardless of whether the employee relied to his or her detriment on the erroneous orders. Marlene Lewis, GSBCA 15431-RELO, 01-2 BCA ¶ 31,642; Castineira; Archilla.

Mr. Dosedall's claims for temporary storage in excess of the 180-day maximum and attorney fees must also be denied. By statute, agencies are authorized to pay the expenses for temporarily storing a transferred or newly-hired employee's household goods. Although the time limit for temporary storage is generally ninety days, agencies may, under certain circumstances, approve an extension of the time limit for up to an additional ninety days. Agencies are not permitted to pay for temporary storage for more than 180 days. 5 U.S.C. § 5724(a)(2); 41 CFR 302- 8.2(d). The agency was thus correct in refusing to reimburse Mr. Dosedall for these expenses. Regarding the attorney fees, there is no statutory or regulatory authority of which we are aware for reimbursing them.

Decision

The claims are denied.

ROBERT W. PARKER
Board Judge