

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

April 29, 2005

GSBCA 16532-RELO

In the Matter of CHARLES J. SMOLLEN

Charles J. Smollen, APO Area Europe, Claimant.

Capt. P. A. Jackson, Commanding Officer, Naval Station, Ingleside, TX, appearing for Department of the Navy.

NEILL, Board Judge.

Mr. Charles Smollen, a civilian employee of the United States Navy, has asked that we review his agency's revision of his original travel authorization. The original authorization provided for payment of certain costs associated with the purchase and sale of Mr. Smollen's residence. When Mr. Smollen submitted a claim for reimbursement of expenses incurred in the purchase of a residence near his new duty station, the claim was rejected on the ground that, as a rehired annuitant, he was not entitled to this benefit. In rejecting Mr. Smollen's claim, the agency also revised Mr. Smollen's original travel authorization to delete the benefit. For the reasons set out below, we affirm the agency's determination and deny the claim.

Background

In September 2002, Mr. Smollen, a retiree from the Army Corps of Engineers, agreed to accept a position of general engineer at Ingleside Naval Station in Texas. At the time, he was living in Pearland, Texas, approximately two hundred miles from Ingleside. He was issued orders to travel from his home in Pearland to Ingleside. The "Purpose of Travel" in his travel authorization read: "Reinstatement to Civil Service." The authorization provided that Mr. Smollen would be reimbursed for various expenses, including real estate expenses.

After reporting for duty at Ingleside in early October 2002, Mr. Smollen submitted a claim for reimbursement of real estate expenses. The claim was denied by his agency on the ground that his original travel authorization had erroneously authorized reimbursement of real estate expenses. The agency explained that, as a rehired annuitant, Mr. Smollen was to be treated as a new appointee. Because new appointees are not entitled to reimbursement of real estate expenses when they report to their first duty station, the authorization to pay these expenses in Mr. Smollen's orders was said to be in error. In denying Mr. Smollen's claim, the agency also issued an amended authorization correcting this error.

Understandably, the claimant is offended by the lack of apparent fairness in the agency's after-the-fact amendment of his travel authorization. He asks that his claim be paid notwithstanding the error made in the original travel authorization. The commanding officer at Ingleside Naval Station strongly supports Mr. Smollen's request.

Discussion

As a civilian employee of the Department of Defense (DOD), Mr. Smollen is subject to the Joint Travel Regulations (JTR). At the time Mr. Smollen reported for duty at Ingleside, the JTR provided, as they do now, that an employee returning to the Government after a break in service is a new appointee.¹ JTR C4051-B (Oct. 2002). The JTR specifically provides that these employees are not entitled to reimbursement of expenses associated with the sale or purchase of a residence. This provision is based on statute which reimburses new appointees for various transportation expenses but does not provide for reimbursement of costs associated with the sale or purchase of the new employee's residence -- as is done for workers already employed when transferred in the Government's interest from one duty station to another. *Compare* 5 U.S.C. § 5723 (2000) *with id.* § 5724a(d).

In the past we have held that, once an agency has authorized travel or relocation allowances which it had the discretion to grant, and the employee incurs expenses in reliance on the authorization, the agency must reimburse the employee. *Thelma H. Harris*, GSBCA 16303-RELO, 04-1 BCA ¶ 32,540 (2003); *Linda M. Conaway*, GSBCA 15342-TRAV, 00-2 BCA ¶ 31,133; *Elizabeth A. Hair*, GSBCA 14285-RELO, 98-2 BCA ¶ 29,914. Mr. Smollen's case, however, does not fall into this category. Neither statute nor regulation permits the agency to reimburse him for real estate expenses he incurred as a new appointee.

In this case, the agency has clearly done Mr. Smollen a disservice by leading him to believe that his real estate expenses would be reimbursed. The law is well settled, however, that a government official may not spend money in violation of statute or regulation. *E.g.*, *Kevin S. Foster*, GSBCA 13639-RELO, 97-1 BCA ¶ 28,688 (1996). In short, neither erroneous advice from a government employee nor erroneous travel orders can create a right to reimbursement in excess of statutory and regulatory entitlements. *David Klaus*, GSBCA 16338-RELO, 04-1 BCA ¶ 32,612; *Aman B. Kay*, GSBCA 15543-RELO, 01-2 BCA ¶ 31,508; *Wendy Castineira*, GSBCA 15092-RELO, 00-1 BCA ¶ 30,740 (1999).

Decision

Given the circumstances of this case, we have no choice but to conclude that the agency's after-the-fact amendment of Mr. Smollen's travel authorization was correct, as was its denial of his real estate claim.

EDWIN B. NEILL

¹ The Federal Travel Regulation, which the JTR implements and supplements for DOD's civilian employees, has a similar provision in 41 CFR 302-3.1 (2002).

Board Judge