

## Board of Contract Appeals

General Services Administration  
Washington, D.C. 20405

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August 3, 2005

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GSBCA 16608-RELO

In the Matter of RUSSELL SHOWERS & WINIFRED LEHMAN

Russell Showers & Winifred Lehman, Cedar Crest, NM, Claimants.

Helen O. Sherman, Director, Office of Financial Management, Department of Energy, Washington, DC, appearing for Department of Energy.

NEILL, Board Judge.

Claimants, Mr. Russell Showers and Ms. Winifred Lehman, are husband and wife, and both are employees of the Department of Energy. Toward the close of 2004, they were transferred from Washington, D.C., to Albuquerque, New Mexico. Since their transfers were deemed to be in the Government's interest, each was authorized relocation allowances. The claimants believe that, based upon these authorizations, they are entitled to separate relocation benefits. In particular, they believe that each is entitled to reimbursement for the costs of moving 18,000 pounds of household goods and to a full miscellaneous expense allowance (MEA).

### Background

Prior to claimants' move to Albuquerque, Ms. Lehman arranged for the packing and transportation of approximately 21,100 pounds of household goods. She subsequently was advised that she would have to reimburse the Government for the cost of shipping household goods in excess of 18,000 pounds.

Mr. Showers, for his part, rented a truck and trailer to transport what he refers to as "much of my property." He explains that he and his wife are only recently married and both had accumulated significant personal items prior to their marriage. Mr. Showers himself

enjoys auto mechanics and woodworking as hobbies and states that he has accumulated a large collection of tools in support of these two hobbies. A comparison of the weights of the rented truck empty and full shows that the net weight of his own household goods was 15,040 pounds. Mr. Showers calculates that the costs of the truck rental, gasoline, and packing materials amount to \$3300.

Believing that, apart from his wife's separate authorization, he too has been authorized to move a total of 18,000 pounds of household goods, Mr. Showers wishes to be reimbursed at the commuted rate for shipment of 15,040 pounds of his own household goods and for the cost incurred by his wife in shipping 3100 pounds in excess of her 18,000 pound limit.

The claimants also believe that they are each entitled to a separate MEA. The agency has replied that, in a case such as this, the MEA and the 18,000 pound limitation on the shipment of household goods are based not on the number of transferred employees, but rather, on the number of residences disestablished and reestablished in connection with the transfer.

#### Discussion

Two specific provisions in the Federal Travel Regulation (FTR) offer the following guidance for married employees transferred in the Government's interest to the same duty station.

When a member of my immediate family who is also an employee and I are transferring to the same official station, may we both receive allowances for relocation?

Yes, if you and an immediate family member(s) are both employees and are transferring to the same official station in the interest of the Government, the allowances under this chapter apply either to:

(a) Each employee separately and the other is not eligible as an immediate family member(s); or

(b) Only one of the employees considered as head of the household and the other is eligible as an immediate family member(s) on the first employee's TA [travel authorization].

If my immediate family member and I both transfer to the same official station in the interest of the Government, may we both claim the same relocation expenses?

No, when separate allowances are authorized under this § 302-3.201, the employing agency or agencies shall not make duplicate reimbursement for the same claimed expenses.

*Id.* 302-3.201.

Under these provisions, therefore, two employees belonging to the same immediate family and transferred to the same duty station may receive, if they so elect, separate relocation allowances. If they do so, they are ineligible for inclusion as a qualifying member of the other transferred employee's immediate family and, under no circumstances, may payment be made to both employees for the same expense. We have previously recognized that, if two employees who are immediate family members are transferred from one permanent duty station to another, their agency may be able to reimburse each employee for relocation expenses separately, provided certain requirements are met. *Daniel C. Schofield*, GSBCA 15531-RELO, 01-2 BCA ¶ 31,560; *James D. Fenwood*, GSBCA 15104-RELO, 00-1 BCA ¶ 30,658 (1999).

These FTR provisions were inserted into the FTR in September 1991, to “enhance benefits paid to employees relocating in the interest of the Government.” An introductory note to the new provisions explained:

Under prior regulation, when employees family members were transferred between old and new duty stations, respectively located close together, only one member of the immediate family could be paid relocation allowances; the other transferred employee family member(s) was eligible for allowances as a family member only.

56 Fed. Reg. 46,988 (Sept. 17, 1991).

The agency has denied claimants' request for reimbursement of separate moving expenses and for separate MEAs. In doing so, the agency relies on a decision of the Comptroller General, our predecessor in resolving disputed travel and relocation claims of federal employees. The decision cited to the claimants by the agency is *Douglas E. and Nancy O. Williams*, 73 Comp. Gen. 1964 (1994). In that decision, a request for separate MEAs was denied by the agency on the ground that the expenses involved related to the discontinuing of the claimants' residence at the old duty station and the establishment of a

residence at the new duty station. Because these expenses were deemed to be common expenses for both claimants, their claim for an additional MEA was denied because it would constitute a duplicate payment for the same costs. Based upon the *Williams* decision, the agency in this case has denied the claimants' requests for separate MEAs. Although the *Williams* decision did not involve a claim for separate moving expenses, the agency in this case has also denied the claimants' request for separate moving expenses, using the same rationale it used to deny the claim for separate MEAs, namely, that the employees share the same residence.

We find the agency's reliance upon the *Williams* decision to be misplaced. Rather than serving as a basis for denying claimants' requests, we read that decision as supportive of their position. It is true that in *Williams*, the Comptroller General denied a request for separate MEAs. He did, however, grant the claimants' requests for reimbursement of separate temporary quarters subsistence expenses (TQSE) and travel expenses. Indeed, in doing so, the Comptroller General even recognized that the introduction of a provision in September 1991 permitting transferred employees belonging to the same family to seek separate relocation allowances could lead to the payment of higher total reimbursements. Nevertheless, he concluded that payment of these separate relocation benefits should be made pursuant to the then new provisions.

Among relocation benefits of an employee transferred in the Government's interest, the right to payment of the cost of shipping 18,000 pounds of the employee's household goods to the new duty station is no less important than payment of TQSE or travel expenses. The statute on which the entitlement for the cost of moving household goods is based provides that the Government shall pay the expenses of transporting, packing, crating, temporarily storing, draying, and unpacking a transferred employee's "household goods and personal effects not in excess of 18,000 pounds net weight." 5 U.S.C. § 5724(a)(2) (2000). In implementing the statute, the FTR provides that "an employee transferred between official duty stations, within or outside the continental United States" is eligible for the transportation and temporary storage of household goods (HHG) at Government expense. FTR 302-71. The maximum amount of HHG that may be shipped or stored at government expense is 18,000 pounds net weight. FTR 302-7.2.

Contrary to the agency's contention, we find nothing in the statute or implementing regulation indicating or suggesting that the right to payment of shipping costs normally available to transferred employees is restricted if these individuals happen to share the same residence. Under normal circumstances, if two federal employees unrelated to each other but sharing the same residence were to be transferred they would certainly each be entitled to a separate shipping benefit regardless of their common residence. The regulations set out above and applied in the *Williams* decision were obviously intended to address the more

subtle situation where the subjects of the transfer not only share the same residence but are also members of the same immediate family and thus either one could also be included as a dependent in the travel authorization of the other transferred employee. The regulations do nothing more than confirm that, notwithstanding this relationship, each such employee, like the unrelated transferred employee, is entitled to separate relocation benefits if he or she so chooses.

In clarifying this issue, the FTR makes mention of some obvious restrictions applicable in such a situation. One transferred employee is, of course, not eligible for the relocation benefits separately authorized for the other. As such, the separate authorization to move 18,000 pounds at the Government's expense cannot include personal effects which are recognized as belonging primarily to the other transferred employee. For example, the goods referred to as "much of my property," which Mr. Showers moved with a rented truck, including those used by him in pursuit of his various hobbies, obviously could not have been moved under his wife's authorization unless Mr. Showers chose to be treated as an immediate family member. Similarly, the personal effects of Ms. Lehman could not have been moved under Mr. Showers' separate authorization.

What, however, of property owned jointly by the claimants? Since both employees have an equal right to these effects, we see no objection to these items being included within the weight allowance of either employee. The prohibition of duplicate payments, however, precludes the employees from ever seeking reimbursement for the cost of moving the *same* jointly owned household effect.

Nothing in the facts provided in the present case suggests to us that the 21,100 pounds shipped by Ms. Lehman comprised solely her own personal effects. Notwithstanding her recent marriage to Mr. Showers and the merging of their two households, we consider it highly unlikely that even 18,000 pounds of this shipment comprised nothing but Ms. Lehman's own personal effects. Rather, it is reasonable to assume that at least the excess of 3100 pounds -- if not considerably more -- was property she owns jointly with Mr. Showers. It is already clear from the record that Ms. Lehman will not be reimbursed for the cost of shipping the excess 3100 pounds of common property. Consequently, we see no problem in Mr. Showers seeking reimbursement for the cost of shipping this portion of the 21,100-pound shipment provided this portion of the original shipment, when added to the 15,040-pound shipment made with the rented truck, does not exceed his own allotted allowance of 18,000 pounds.

We likewise find that the agency's reliance on the *Williams* decision to deny the claimants' request for separate MEAs is misplaced. We look, of course, to the prior decisions of the Comptroller General for persuasive value, and we have frequently adopted

his reasoning and conclusions as our own. Nevertheless, we are not bound by these decisions. *Edward W. Irish*, GSBCA 15968-RELO, 03-1 BCA ¶ 32,122 (2002). From what we have already said regarding the Comptroller General's ruling on the claim for separate TQSE and travel expenses in *Williams*, it is obvious that we have no difficulty with that aspect of his decision. We disagree, however, with the reason given for his denial of the claimants' request for separate MEAs. There are undoubtedly some common expenses associated with the discontinuance of one residence and the establishment of another. The disconnection and connection of utilities promptly come to mind as examples of typical common costs. Other costs, however, such as fees for new drivers' licenses and medical and dental expenses associated with the change of residence are clearly not common. See FTR 302-16.1. We are, therefore, reluctant to conclude, as the Comptroller General did in *Williams*, that payment of separate MEAs inevitably leads to duplicate payments. Rather, we deem it best to look to current provisions in the FTR.

The FTR reads:

What amount may my agency reimburse me for miscellaneous expenses?

The following amounts will be paid for miscellaneous expenses without support or documentation of expenses.

- (a) Either \$500 or the equivalent of one week's basic gross pay, whichever is the lesser amount, if you have no immediate family relocating with you; or
- (b) \$1000 or the equivalent of two weeks' basic gross pay, whichever is the lesser amount, if you have immediate family members relocating with you.

FTR 302-16.102.

Since FTR 302-3.200 provides that transferred members of the same immediate family are entitled to separate relocation benefits, the claimants' request for separate MEAs would best be granted by paying each of them the lesser amount prescribed in FTR 302-16.102(a) for a transferring employee with no immediate family members.

Decision

The claimants' requests for separate miscellaneous expense allowances and separate moving expenses are granted. They should be paid in the manner requested provided their claims are otherwise acceptable.

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EDWIN B. NEILL  
Board Judge