

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

June 13, 2005

GSBCA 16641-RELO

In the Matter of KEVIN R. KIMIAK

Kevin R. Kimiak, Panama City, FL, Claimant.

Judy Hughes, Travel Management and Procedures Office, Defense Finance and Accounting Service, Columbus Center, Columbus, OH, appearing for Department of Defense.

PARKER, Board Judge.

The Department of Defense's (DoD's) Defense Finance and Accounting Service has forwarded for our review Kevin R. Kimiak's claim for reimbursement of real estate expenses. In June 2004, Mr. Kimiak was hired as a supervisory information technology specialist by DoD's Center for Explosive Ordnance Disposal and Diving in Panama City Beach, Florida. At the time he was hired, Mr. Kimiak was not a Government employee. Mr. Kimiak was issued travel orders to travel from his residence in Athens, Georgia, to his first duty station in Panama City Beach. The travel orders authorized reimbursement of real estate expenses. In November 2004, Mr. Kimiak sold his residence in Athens and claimed reimbursement for the closing costs associated with the sale.

DoD denied the claim on the basis that reimbursement of real estate expenses for newly-hired employees is not authorized by statute or regulation. Without a legal basis for payment, DoD explained, Mr. Kimiak's travel orders purporting to authorize the allowance were erroneous and cannot entitle him to reimbursement. Mr. Kimiak's supervisor has asked us to review DoD's determination.

Discussion

Although the agency did Mr. Kimiak a disservice by purporting to authorize reimbursements that it had no power to authorize, the agency is correct that Mr. Kimiak's claim 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 302-3.2 (2003), and makes clear that new appointees may not receive an allowance for expenses incurred in residence transactions. *Id.* 302-11.4(a); *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. DoD's Joint Travel Regulations (JTR) are to the same effect. JTR C14001.

The fact that Mr. Kimiak's travel orders erroneously authorized reimbursement of real estate 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*.

Decision

DoD correctly applied the law in deciding that Mr. Kimiak's claim should not be paid. The claim is thus denied.

ROBERT W. PARKER
Board Judge