

# Board of Contract Appeals

General Services Administration  
Washington, D.C. 20405

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October 18, 2005

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GSBCA 16703-RELO

In the Matter of ROSEMARY SCHULTZ

Rosemary Schultz, Millington, TN, 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.

## Background

Rosemary Schultz was issued a travel authorization to travel from her home in Hoover, Alabama, to Millington, Tennessee, in January 2005. The purpose of the travel was to report to her first permanent duty station as a Government employee to fill a position as a research psychologist for the Department of the Navy.

Ms. Schultz's travel authorization erroneously authorized thirty days of temporary quarters subsistence expenses (TQSE) under the fixed-rate method. She was issued a travel advance toward the TQSE in the amount of \$2900. When Ms. Schultz later filed her travel claim, the agency realized Ms. Schultz, as a new appointee to the Government, was not entitled to payment of TQSE. After subtracting her allowable entitlement for per diem and transportation, the Navy told Ms. Schultz that she owed \$2849.24 to the Government for the excess travel advance that she had received.

Ms. Schultz filled a position for which the agency had had difficulty recruiting qualified individuals. The employing office, the Bureau of Personnel, had considered offering Ms. Schultz a \$5000 recruiting incentive, but, after discussing it with the Personnel Support Activity Detachment, decided to offer a recruiting incentive of \$3000 and combine it with a relocation incentive by authorizing TQSE for thirty days.

Ms. Schultz, citing the unfairness of the circumstances, has requested the Board to allow her claim for TQSE or, in the alternative, waive the indebtedness incurred in connection with the travel advance.

### Discussion

Although the agency did Ms. Schultz a disservice by authorizing reimbursements that it had no power to authorize, the agency is correct that Ms. Schultz's claim must be denied. By statute, a new appointee to federal service is entitled to certain benefits when he or she moves to his duty station from his or her 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 similarly provides for payment of the foregoing expenses and makes clear that other expenses, including TQSE, may not be reimbursed for new appointees. 41 CFR 302-3.2 (2003); *Jerome A. Dosdall*, GSBCA 16244-RELO, 04-1 BCA ¶ 32,464. These regulations have the force and effect of law. The Joint Travel Regulations (JTR) are to the same effect. JTR C5080-B(6)(c).

The fact that Ms. Schultz'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*.

Here, considering the fact that payment of TQSE was intended to serve as a substitute for a larger recruiting incentive, Department of Defense (DOD) should consider waiving repayment of the debt. The Board has no authority to waive the indebtedness. *E.g.*, *Stephen V. Yates*, GSBCA 16236-RELO, 04-1 BCA ¶ 32,542 (2003); *Stephen Barber*, GSBCA 15825-RELO, 03-1 BCA ¶ 32,063 (2002). This authority is vested in the agency, which may waive repayment if it concludes that collection would be “against equity and good conscience and not in the best interests of the United States” and if there is no indication of “fraud, misrepresentation, fault, or lack of good faith” on the part of the person whose debt is requested to be waived. 5 U.S.C. § 5584(a)(2)(A). DOD considered offering Ms. Schultz a \$5000 recruiting incentive for filling a position for which there were few qualified candidates but decided instead to offer her a \$3000 incentive plus thirty days of TQSE. If the agency should decide to waive the debt, Ms. Schultz will have been treated fairly, in our judgment.

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ROBERT W. PARKER  
Board Judge