

# Board of Contract Appeals

General Services Administration  
Washington, D.C. 20405

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July 19, 2001

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GSBCA 15372-TRAV

In the Matter of JOHN M. PEMBERTON

John M. Pemberton, Heidelberg, Germany, Claimant.

James M. Heaton, Attorney-Advisor, and Ute Jerosch, Personnel Officer, Civilian Human Resources Management Agency, Department of the Army, Heidelberg, Germany, appearing for Department of the Army.

**WILLIAMS**, Board Judge.

The agency properly denied a claim for reinstatement of separation travel entitlement where the employee resigned his overseas position without requesting separation travel and was rehired by the agency overseas after a break in service of over ninety days. The Board lacks jurisdiction over a claim for living quarters allowance (LQA) and refers it to the Office of Personnel Management (OPM).

## Background

By memorandum dated September 10, 1997, claimant, John M. Pemberton, a postal clerk employed by the Department of the Army in Germany, notified the agency that he was formally resigning as a postal operations clerk effective September 30, 1997, which was also to be his last day of employment. Claimant was eligible for return transportation to the continental United States (CONUS) and was drawing Living Quarters Allowance (LQA). In a subsequent memorandum on September 10, claimant informed his commander that he intended to resign effective October 15, 1997.

Claimant was informed by the agency that he would be on "terminal leave until 15 October and that 15 October would be [his] resignation date." Because claimant was considering studying in Israel, he did not exercise his return rights under his transportation agreement.

Claimant visited Israel but decided he could not live there and returned to Germany on October 17, 1997. On October 22, claimant met an officer from the postal unit for which he previously worked and was told the unit was short handed, and that he should come back.

Meanwhile, claimant learned he could pursue his studies in Germany and decided to volunteer at the postal unit until he could submit the paperwork necessary to obtain a position. The command promised claimant he would be hired, and he continued working as a volunteer until he could submit the paperwork on November 14.

By memorandum dated December 19, 1997, a platoon leader from the 510th unit requested an extension of travel rights and transportation rights for claimant for six months. The memorandum stated in pertinent part: The following memorandum is to request and agree to extend the transportation rights for Mr. John Pemberton . . . . Request these rights be extended for 6 months as we are attempting to hire Mr. Pemberton as a GS05 for the 1/510th Postal Company." On December 22, 1997, Mr. Pemberton was hired as a lead postal operations clerk for the Department of the Army in Schwetzingen, Germany, with an effective date of January 5, 1998. Claimant commenced his employment on January 5, and his initial tour was to be thirty-six months.

In early 2000, claimant verbally requested that the Army's Heidelberg Civilian Personnel Advisory Center clarify his eligibility for LQA. By letter dated March 28, 2000, the agency responded to claimant's request, informing him that he was ineligible for LQA.

By letter dated April 12, 2000, claimant requested that the agency correct its decision denying him reinstatement of travel rights. Claimant argued that he was rehired within ninety days, and that the agency had "agreed to extend [his] transportation rights for [his] intended stay of duty which was 6 months."

The agency denied claimant's request, reasoning that if the travel is not used at the time of separation or at the end of an approved delay, the entitlement is lost. The agency further noted that requests for delayed travel submitted after separation are not valid. The agency explained that claimant had resigned from federal employment effective September 30, 1997, and had not submitted a written request for authorization to delay his travel return prior to that date. Claimant was subsequently re-employed effective January 5, 1998, but at that time, as a locally hired employee, was not eligible for the negotiation of a transportation agreement.

## Discussion

### Reinstatement of Travel Rights

Statute authorizes payment of travel and transportation expenses on the return of an employee from a post of duty outside the continental United States "to the place of his actual residence at the time of assignment to duty outside the United States." 5 U.S.C. § 5722(a)(2) (Supp. III, 1997). The implementing Federal Travel Regulation (FTR), 41 CFR 302-1 (1997), provides that all travel shall be accomplished as soon as possible and that the maximum time for beginning allowable travel and transportation shall not exceed two years from the employee's transfer or appointment.

The pertinent provisions of the Joint Travel Regulations (JTR) provide:

C4201            SEPARATION TRAVEL ENTITLEMENTS

An employee is entitled to travel and transportation allowances for travel from the OCONUS [outside continental United States] PDS [permanent duty station] to the actual residence established at the time of appointment or transfer to the OCONUS PDS.

A. Election to Separate OCONUS for Personal Reasons. An employee's election must be in writing and include a statement that the employee understands the loss of travel entitlements.

B. Refusal to Accept or Use Return Travel Entitlements Within a Reasonable Time After Release from Duty. A separating employee loses return travel entitlements when the employee refuses to accept or use them after release from work status in the OCONUS position. OCONUS activity commanding officers may authorize a delay for a reasonable period upon receipt of an employee's written request. Normally, a delay of 90 or less calendar days is reasonable. Under unusual extenuating circumstances that, in the opinion of the OCONUS activity commanding officer, warrant a longer delay, return travel may be delayed up to 2 years from the separation date. Requests for delays from employees separating OCONUS to accept private OCONUS employment or retire locally for the purpose of establishing an OCONUS retirement residence must not be approved. If a request for delay is not received by the OCONUS activity commanding officer, or if the employee refuses to accept or use travel entitlements at the expiration of the approved delay period, the employee loses the entitlements.

JTR C4201 (emphasis added).

There are several reasons why this regulation does not permit reinstatement of claimant's return travel entitlement here. First, the regulation contemplates that an employee is to request separation travel or a delay in writing for such travel while still in work status in the OCONUS position. Claimant admittedly did not do this because he intended to remain overseas and study.

Second, the regulation flatly prohibits a delay for persons to accept private OCONUS employment or to retire locally. Here claimant's intentions at the time of his separation were to remain overseas to study in Israel. Only after the Israel experience proved untenable did claimant return to Germany and pursue obtaining re-employment with his old unit.

Third, if the employee refuses to accept or use the travel entitlement at the expiration of the delay period, the employee loses the entitlement. Here claimant asked for a delay of six months, yet signed on with his new job for three years, making it impossible for him to accept or use the entitlement within the period of requested delay or within the two-year regulatory maximum.

Finally, claimant's reemployment with the Army after a period of a ninety-five-day break in service does not legally resuscitate the entitlement he unfortunately relinquished.

With respect to separation travel, the Comptroller General had long adhered to the position that the employee's travel must be clearly incidental to the termination of an

assignment and that the travel should commence within a reasonable time after the assignment has been terminated in order for return expenses to be reimbursable. Carroll Kenneth Moon, B-248013 (Sept. 8, 1992); Clarence L. Aiu, B-204286 (June 12, 1984); 28 Comp. Gen. 285, 289 (1948). Here claimant is attempting to have his return travel entitlement extended to a second discrete employment OCONUS, not the assignment which originally triggered the benefit. As such, the agency correctly declined reinstatement of claimant's return travel entitlement.

### LQA

Claimant has also challenged the agency's denial of his claim for LQA, but this Board does not have the authority to settle that claim since it is not an expense of travel, transportation, and relocation, but rather an allowance payable after an employee has relocated. As such, claims for LQA involve compensation of federal employees and may be brought before OPM. Wilma F. Sexton, GSBCA 13790-RELO, 97-1 BCA ¶ 29,855; Carmon L. Woodley, GSBCA 13706-RELO, 97-1 BCA ¶ 28,861; Donald Guenther, GSBCA 14032-RELO, 97-1 BCA ¶ 28,795.

Because we do not have jurisdiction over this aspect of the claim, we are dismissing it from our docket and transferring it for resolution to OPM.

### Decision

The claim is denied in part and dismissed in part.

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MARY ELLEN COSTER WILLIAMS  
Board Judge