

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

January 16, 2002

GSBCA 15544-TRAV

In the Matter of CIRILA R. MARTIN

Cirila R. Martin, Landstuhl, Germany, Claimant.

Paul Wolfe, Personnel Director, Department of Defense Education Activity, Arlington, VA, appearing for Department of Defense.

WILLIAMS, Board Judge.

The Department of Defense (DoD) Education Activity in Arlington, Virginia, has requested our opinion on whether claimant, Cirila R. Martin, may be reimbursed for the renewal agreement travel for her two adopted children. Governing regulations do not permit such reimbursement because the adopted children were not members of claimant's household at the time she performed her renewal agreement travel. In addition, in order to be eligible for renewal agreement travel allowances, claimant's children were required to spend a substantial amount of time in the United States during this travel, and they spent no time there.

Background

Effective August 22, 1990, claimant was recruited from the United States for a teaching position with the DoD Dependents School (DoDDS) in Pirmasens, Germany. Claimant was reassigned to the Landstuhl Elementary/Middle School in Germany effective August 1, 1995. As such, Ms. Martin and her eligible dependents were authorized Government-provided renewal agreement travel from her overseas post of assignment to her place of actual residence, Phoenix, Arizona, every two school years. On February 10, 2000, renewal agreement travel orders were issued to claimant for travel to commence on or about June 14, 2000, from Landstuhl, Germany, to Phoenix, Arizona, with an alternate destination of the Philippines, and return to Germany on August 10, 2000.

Effective June 21, 2000, claimant adopted two children in the Philippines. On July 27, 2000, claimant requested and was issued an amendment to her travel orders to include her two children. As of that time, the two minors were residing in the Philippines. Concurrent travel for these children was authorized to claimant's place of actual residence,

Phoenix, Arizona, with an alternate destination of the Philippines. However, claimant could not obtain the necessary visas for the children which would authorize their travel to the United States when she performed her renewal agreement travel. Therefore, after claimant completed her own renewal agreement travel, she purchased tickets for the children's direct travel from the Philippines to Frankfurt, Germany.

On November 2, 2000, almost three months after claimant completed her renewal agreement travel, the children joined claimant in Landstuhl and began residing with her as members of her household. On January 22, 2001, claimant submitted a travel voucher claiming reimbursement in the amount of \$930 for the children's airline tickets from the Philippines to Frankfurt, Germany, and \$80 for the children's van transportation from the Frankfurt airport to her residence in Landstuhl.

Discussion

It is the agency's position that reimbursement should be denied because the children did not meet the definition of "dependents" at the time their travel was performed since they were not yet residing in Ms. Martin's household.¹ In addition, the agency believes that the children do not meet the eligibility criterion that a substantial amount of renewal agreement travel time be spent in the United States, since they spent no such time in the United States.

The agency correctly determined that the regulations prohibit reimbursement in this case. Federal Travel Regulation (FTR) 302-1.13(b) authorizes renewal agreement travel, between periods of overseas assignments, for an eligible employee "and his/her immediate family." 41 CFR 302-1.13(b) (1999). The term "immediate family" is defined to include:

Any of the following named members of the employee's household at the time he/she reports for duty at the new permanent duty station or performs authorized or approved overseas tour renewal agreement travel or separation travel:

....

(ii) Children of the employee or employee's spouse who are unmarried and under 21 years of age or who, regardless of age, are physically or mentally incapable of self-support. (The term "children" shall include natural offspring; stepchildren; adopted children; grandchildren, legal minor wards, or other dependent children who are under legal guardianship of the employee or employee's spouse; and a child born after the employee's effective date of transfer when the travel of the employee's expectant spouse to the new official station is prevented at the time of the transfer because of advanced stage of pregnancy, or other reasons acceptable to the agency concerned, e.g., awaiting completion of the school year by other children.)

¹Although the agency requested that the Board resolve this matter, it provided us with its recommendation.

Id. 302-1.4(f)(1)(i), (ii) (emphasis added). The Joint Travel Regulations (JTR) also define immediate family to include members of the employee's household at the time travel is performed. JTR app. A.

Here, because the adopted children were not members of the employee's household at the time she performed her renewal agreement travel, the employee is not entitled to be reimbursed for their travel expenses. Alan B. Carlson, B-240143 (July 22, 1991) (immediate family as defined by FTR includes children who are members of employee's household at time renewal agreement travel is performed); Betty F. Leatherman, 44 Comp. Gen. 443 (1965) (definition of immediate family "limits persons embraced within that term to members of the household of the employee"); cf. James H. Woods, B-206456 (Mar. 25, 1983) (dependents acquired after employee reports to new duty station not members of household entitled to transportation expenses).

There is an additional independent basis for denying this claim in that the children did not spend any time in the United States during renewal agreement travel. FTR 302-1.13(b)(3) provides, in pertinent part:

(3) Alternate destination. An employee and his/her family may travel to a location in the United States or another country in which the place of actual residence is located other than the location of the place of actual residence; however, an employee whose actual residence is in the United States must spend a substantial amount of time in the United States incident to travel under this section to be entitled to the allowance authorized.

41 CFR 302-1.13(b)(3).²

In Roscoe Cleveland, 53 Comp. Gen. 468 (1974), the Comptroller General interpreted the "substantial amount of time" requirement as follows:

Although we have previously refused to fix a standard for general use which could be used in determining what is a sufficiently long stay to meet the requirement of a substantial time spent in the country of actual residence, we have ruled on what is not considered a substantial visit. We have held that short 1 to 4 day stopovers in the home country are not substantial visits. See 41 Comp. Gen. 146 and B-171174, December 18, 1970, *supra*. In those cases it was apparent that the leave was not taken for the purpose of visiting the United States. In [claimant's] case, however, it is apparent that he did not intend his visit to the United States to be a mere stopover. He was not just passing through the United States but rather he intended to spend and did spend a total of 16 days of his home leave in his home country. . . . [Claimant] has therefore fulfilled the requirements [of the regulations] that a substantial amount of time be spent in the United States.

²JTR C4162 contains a similar requirement that the majority of renewal agreement travel time be spent in the United States.

53 Comp. Gen. at 470-71. Here, since claimant's adopted children did not even pass through the United States at the time of her renewal agreement travel, it is clear they are not entitled to travel allowances under either the FTR or JTR provisions.

Decision

The claim is denied.

MARY ELLEN COSTER WILLIAMS
Board Judge