

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

May 23, 2002

GSBCA 15763-TRAV

In the Matter of ALFRED A. NAGY

Alfred A. Nagy, The Villages, FL, Claimant.

Larry E. Gallagher, Deputy Director, Travel Pay Services, Defense Finance and Accounting Service, Columbus, OH, appearing for Department of Defense.

NEILL, Board Judge.

Claimant in this case, Mr. Alfred A. Nagy, is a retired civilian employee of the Department of Defense (DoD). He asks that we review his former agency's denial of a claim for per diem allowance to which he contends he was entitled based upon an extended temporary duty (TDY) assignment. On review of the record before us, we affirm the agency's denial of the claim.

Background

In early January 1995, Mr. Nagy was working as an investigator assigned to the security office of the Defense Reutilization and Marketing Service (DRMS) headquarters in Battle Creek, Michigan. His permanent duty station (PDS) had been in Battle Creek since his transfer there from a DRMS regional office in Columbus, Ohio, approximately two years earlier. By letter dated January 12, 1995, the Command Security Officer at DRMS headquarters directed Mr. Nagy to proceed to the DRMS regional office in Columbus to assist in the development, implementation, and evaluation of an expanded retail sales policy.

Claimant proceeded to Columbus under blanket travel orders already in place. Meanwhile, DRMS advised the Defense Finance and Accounting Service (DFAS) that Mr. Nagy would be traveling under those orders to Columbus and other cities, leaving Battle Creek on January 13 and returning on March 21, 1995.

Mr. Nagy remained in Columbus considerably beyond March 21, 1995. He states that during his stay in Columbus, he established a good working rapport with the local command officials regarding security and investigative matters. He further states that, when he

informed DRMS's Command Security Officer in Battle Creek of this fact, the Security Officer instructed him to remain on site in Columbus.

In January 1996, Mr. Nagy wrote to the Command Security Officer in Battle Creek asking that he be authorized to make a permanent change of station (PCS) to Columbus. He pointed out that it would undoubtedly be more in the Government's interest for him to fulfill his responsibilities by being assigned to Columbus rather than Battle Creek. He indicated that, if given a PCS authorization, he would be content with nothing more than travel pay and authority to move, via Government van, some personal belongings and office documents remaining at Battle Creek.

In March 1996, Mr. Nagy again wrote the Command Security Officer in Battle Creek. This time it was to remind him that he had yet to receive a TDY fund cite which would reflect the fact that his stay in Columbus had been extended per the Security Officer's direction. According to Mr. Nagy, he was subsequently advised by the Command Security Officer that the deputy commander was opposed to signing blanket travel orders such as those which Mr. Nagy had used to travel to Columbus in 1995. However, the Security Officer assured Mr. Nagy that he was working hard to have him assigned permanently to Columbus.

In July 1996, claimant gave up his apartment in Battle Creek – apparently in anticipation of being permanently assigned, per his earlier request, to the DRMS office in Columbus. The efforts of the Command Security Officer to obtain PCS orders for Mr. Nagy, however, were unsuccessful. In early March 1997, we find him still attempting to secure approval of a transfer for Mr. Nagy. In a memorandum sent at that time to the DRMS Commander, the Security Officer renewed his request, pointing out that this was his third attempt to secure approval of a PCS for Mr. Nagy. The Security Officer explained that there would be no PCS costs since Mr. Nagy was already in place. He wrote: "This simply [is] a matter of getting the paper work to agree with reality." DRMS Command did not approve the Security Officer's request. This, in the claimant's own words, left him "in an administrative limbo."

The issue of Mr. Nagy's transfer did not surface again until the close of 1997. By that time, Mr. Nagy's extended absence from Battle Creek had become a matter of concern to senior officials at DRMS headquarters. The decision was made to recall him from Columbus. A memorandum of the meeting at which this decision was made notes that the DRMS officials recognized that, in recalling claimant to Battle Creek, there might be a question regarding his entitlement to additional TDY or PCS benefits. Nevertheless, the decision was made to recall Mr. Nagy and to deal independently with any possible claim he might later submit for benefits. The Command Security Officer was told to prepare a letter directing Mr. Nagy to return to Battle Creek.

The Command Security Officer strongly objected to Mr. Nagy's recall. In a point paper prepared for the Commander, he criticized the reorganization plan which originally necessitated the transfer of Mr. Nagy from the field to Battle Creek in 1993 and argued strenuously that the assignment of investigators, such as Mr. Nagy, to the field was

considerably more effective and efficient. Nevertheless, Mr. Nagy was eventually ordered to report back to Battle Creek by April 27, 1998.

On return from Columbus, Mr. Nagy formally requested that his superiors provide him with a fund cite to which he could refer in presenting a claim for the cost of meals and incidental expenses incurred during what he considered to be a three-year TDY assignment to Columbus. At the same time, he asked that he be issued TDY orders covering the period beginning October 1, 1995 (when his blanket travel authorization expired), and ending on April 24, 1998 (when he left Columbus to return to Battle Creek in reply to a directive from DRMS headquarters).

The orders and a fund cite were not provided. Mr. Nagy did, however, advise DRMS headquarters of his claim for TDY expenses. The request did not include any claim for the cost of lodging but was limited to what the claimant referred to as "rations per diem." The claim also excluded any claim for TDY covering those periods when Mr. Nagy was away from Columbus on TDY elsewhere. He acknowledged that his vouchers covering those periods had already been processed and closed out. The DRMS comptroller directed Mr. Nagy to submit his claim to DFAS. Mr. Nagy submitted his claim to DFAS in February 1999. In submitting the claim, he explained that the only written TDY order he had in support of his claim was one directing him to be in Columbus for the first part of 1995. The remaining period of his TDY was said to be based "on a continuing verbal order from . . . [the] DRMS Command Security Officer at the time." Upon inquiring regarding the status of his claim at DFAS in August 1999, Mr. Nagy was told that the file had been lost. He resubmitted his claim on September 1, 1999.

By letter dated October 4, 1999, DFAS advised Mr. Nagy that it could not pay his TDY claim without amended orders extending his TDY beyond the date stated in his original orders. The DFAS official writing to Mr. Nagy indicated that DRMS had been contacted regarding the need for an amendment but had declined to issue one.

In June 2000, Mr. Nagy, using the DoD Hotline Referral Program, requested DoD's Office of the Inspector General (IG) to assist him in securing the orders and a fund cite necessary to pay his pending claim. The office prepared a full report on the matter and recommended to Mr. Nagy's agency in October 2000 that the claim be referred to the Comptroller General for settlement. The agency responded to the recommendation by pointing out that claims of this nature were now decided by this Board. The agency also provided the IG's office with a legal memorandum discussing the claim. Based upon a review of this memorandum and decisions of this Board regarding similar claims, the IG's office changed its original recommendation. In a follow-up report, the office recommended instead that DRMS issue two sets of PCS orders to Mr. Nagy. The first set of orders was to take effect upon the expiration of his original TDY orders directing him to proceed to Columbus. The second set of orders was to transfer him from Columbus to Battle Creek on the date of his recall in the spring of 1998.

DRMS issued the PCS orders as recommended by the IG's office. DFAS, in turn, advised Mr. Nagy of this fact and invited him to submit a relocation claim. To date, Mr. Nagy has declined to do so; he has elected instead to ask this Board to review DRMS's denial of his TDY claim.

Discussion

It is well settled that the papers processed by an agency or even the agency's statements are not necessarily conclusive proof of the location of an employee's official duty station. The General Accounting Office (GAO), which formerly resolved the travel claims of Government employees, traditionally held that whether an assignment to a particular location should be considered a TDY assignment or PCS is a question of fact. In determining this fact, GAO was less interested in the paper trail created by the agency and the employee and more interested in the facts establishing where the employee expected or was expected to spend the greater part of his or her time performing official duties. E.g., Bertram C. Drouin, 64 Comp. Gen. 205 (1985); Frederick C. Welch, 62 Comp. Gen. 80 (1982). Upon assuming from GAO the responsibility of resolving travel claims of Government employees, this Board made clear that, in dealing with the question of whether an employee should be considered to be on TDY or at his or her PDS, it would use the same approach as previously used by GAO. John P. DeLeo, GSBCA 14042-TRAV, 97-2 BCA ¶ 29,156. Subsequent decisions confirm that we have consistently followed this approach. E.g., Kenneth E. Billings, GSBCA 15264-TRAV, 00-2 BCA ¶ 30,961; James D. Fenwood, GSBCA 15104-RELO, 00-1 BCA ¶ 30,658 (1999); Kenneth Marler, GSBCA 15108-RELO, 00-1 BCA ¶ 30,651 (1999); Jimmy D. Graves, GSBCA 14332-RELO, 98-1 BCA ¶ 29,670; Gerard R. Sladek, GSBCA 14145-TRAV, 98-1 BCA ¶ 29,403 (1997).

Based upon our review of the facts in Mr. Nagy's case, it is clear that the Command Security Officer who sent Mr. Nagy to Columbus and later orally directed him to remain there expected that Mr. Nagy would spend the greater part of his time performing official duties at Columbus rather than at Battle Creek. The record confirms that this agency official was opposed to the reorganization plan which resulted in Mr. Nagy being assigned to Battle Creek and strongly believed, as a matter of policy, that it was best to have his investigators working in the field rather than at headquarters. Indeed, after Mr. Nagy had been working at Columbus for two years, this official, in continuing to press his request for a formal PCS assignment to Columbus for Mr. Nagy, argued that a formal transfer would only be "a matter of getting the paper work to agree with reality."

As for the expectations of Mr. Nagy, we believe that he was well aware of the Command Security Officer's preference that his investigators remain in the field and that he was prepared to remain at Columbus for the greater part of his time. On arriving at Columbus, Mr. Nagy promptly established successful working relationships with local agency officials. Once this had been accomplished, the Command Security Officer instructed him to stay on in Columbus beyond March 21, 1995. Not surprisingly, after approximately a year at Columbus, Mr. Nagy asked that his actual situation at Columbus be confirmed through a formal transfer. He apparently was assured by the Command Security Officer that it would be. In expectation of a formal transfer, he gave up his residence in Battle Creek. As for his residence in Columbus, from the time of his arrival in 1995 until his departure in 1998, Mr. Nagy arranged to stay in a private home and thus never sought reimbursement for lodging expenses.

Even after requesting a formal transfer, Mr. Nagy, in March 1996, was seeking a fund cite and an extension of his travel authorization which had expired during the prior year. Undoubtedly, this was because he intended to submit a claim for per diem for the period

spent in Columbus after the expiration of his travel authorization in 1995 and prior to the granting of his request for an official transfer with the issuance of PCS orders. He apparently was laboring under the mistaken assumption that, until he was in receipt of actual PCS orders, he would be deemed to be in TDY status. This, as we have seen, is not the case. One's PDS can shift to a TDY location, as a matter of fact, without the issuance of PCS orders. This, in fact, is what occurred in Mr. Nagy's case.

We find it less than reasonable for the claimant to believe that he remained in TDY status after the expiration of his original authorization. Except in the case of training, a TDY assignment of such long duration would have been highly extraordinary. As a DoD civilian employee, Mr. Nagy is subject to the Department's Joint Travel Regulations (JTR). Under the JTR in effect during the period Mr. Nagy was working at Columbus, TDY assignments such as Mr. Nagy's were not to exceed 180 consecutive days. An assignment beyond that duration required special cost analysis and justification. JTR C4455.¹ While Mr. Nagy may not have been aware of the particular requirements of this provision, we would at least expect him to realize, as an experienced DoD civilian employee, that it would be highly unlikely that he had the requisite authorization to remain at Columbus in TDY status for such a long period of time based solely upon the oral bidding of the Command Security Officer. When it became clear that DRMS was not prepared to extend Mr. Nagy's original travel authorization and provide a fund cite, it should have been patently clear to claimant that, with the expiration of the original period of authorized TDY, it was not realistic for him to consider that he was continuing to serve at Columbus in a TDY status. Indeed, it would appear that Mr. Nagy himself recognized that his TDY status was no longer valid when he writes that, without PCS orders or renewed TDY authorization, he was in an "administrative limbo."

Neither are we led to a different conclusion by the fact that, during his extended stay in Columbus, Mr. Nagy maintained a postal box in Battle Creek, continued to pay taxes to the City of Battle Creek and the state of Michigan, and operated his motor vehicle using a Michigan driver's license. Given his mistaken assumption that he was entitled to TDY benefits until he received formal PCS orders, it does not surprise us that the claimant deferred making formal changes regarding his "residence" in Michigan pending payment of his TDY claim.

Undoubtedly, DRMS should have issued PCS orders in 1995 when Mr. Nagy's TDY authorization expired. Nevertheless, responsibility for failing to resolve the resulting impasse does not rest with the agency alone. As we have previously pointed out, where an employee remains uncertain of his or her status, that employee can bring the issue to a head simply by submitting a travel voucher which the agency can either pay or deny. In the event of denial, the employee is then free to pursue his or her claim to an administrative settlement before this Board. See William E. Day, GSBCA 14640-RELO, 99-2 BCA ¶ 30,421. Mr. Nagy complains of the inconvenience and consternation of living in a continuing state of uncertainty while working at Columbus. Regrettably, much of this personal turmoil was due to his own failure to press promptly for a ruling on the matter.

¹ This same limitation remains in effect today but is now found at JTR C4430.

It is unfortunate that the agency delayed for such a long period of time before deciding to issue PCS orders to Mr. Nagy for his transfer to Columbus and subsequently for his return to Battle Creek. This belated decision, however, was obviously the correct decision. It follows precedents set out in decisions by GAO and followed by this Board since it assumed from GAO responsibility for settling travel and relocation claims of civilian employees of the Federal Government. Appellant's claim for TDY is, therefore, denied.

EDWIN B. NEILL
Board Judge