

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

February 7, 2001

GSBCA 15432-RELO

In the Matter of FREDERICK J. BARTH

Frederick J. Barth, Henderson, NV, Claimant.

Ray E. York, Chief, Travel Systems Division, Defense Finance and Accounting Service, Indianapolis, IN, appearing for Department of Defense.

BORWICK, Board Judge.

In this matter, claimant, Frederick J. Barth, a civilian employee of the United States Department of Defense, agency, appeals from the agency's establishment of a debt of \$5632.33. The agency established the debt when it determined that claimant had been erroneously reimbursed for permanent change of station (PCS) entitlements for his family because claimant and his family had returned from abroad to retire from the agency. We affirm the agency's decision since the agency correctly applied the controlling statute and the applicable provisions of the Joint Travel Regulations (JTR).

Claimant, stationed in Korea, decided to retire and requested the agency to allow an early return of his family. The agency agreed to the request and issued a travel authorization, dated May 21, 1998, for their return. The authorization, however, included entitlement to reimbursement of temporary quarters subsistence expenses (TQSE) and miscellaneous expense allowance (MEA). Upon receipt of the authorization, claimant told his supervisor, the Civilian Personnel Office, Camp Humphreys, Korea, and finance personnel at Fort Belvoir, Virginia, that he was not in PCS status and that the orders were for return of his family only. Claimant states that those offices "said that I needed PCS orders, even after I informed them that I was not returning to the United States at that time." Claimant states that those offices "also insisted that my family was entitled to lodging and meals according to the JTR." Claimant later returned to the United States to retire.

Claimant's family returned from overseas, and between June 13 and August 11 incurred sixty days of TQSE and MEA. On September 9, claimant submitted a voucher and was reimbursed \$5741.70, which the agency states represents the net of dependent per diem, transportation, TQSE, and MEA, less federal income tax and medicare withholding.

During an audit of claimant's relocation income tax allowance claim, the agency determined it had erroneously paid claimant TQSE and MEA and, on July 26, 2000, advised claimant that it was establishing a debt of \$5617.33 and charging claimant an administrative fee of \$15 for a total debt of \$5632.33. The agency advised claimant that "the orders were for Return From Overseas for Separation. The entitlements on this type of order [are] limited to transportation for dependents." The debt of \$5632.33 is less than the \$5741.70 the agency paid to claimant because the agency allowed claimant reimbursement for dependent transportation.

Claimant disputes the debt, stating that:

all of the experts . . . in Korea, Fort Belvoir, and finance . . . all stated that I was entitled to the funds that you now insist that I have to repay. This would create an extreme hardship on myself and my family, as the only income that I have is my retirement pay.

The statute in effect when claimant's family incurred TQSE and MEA authorized, as it does today, agencies to pay TQSE to an employee when the employee is transferred in the interest of the Government. 5 U.S.C. § 5724, 5724a (1994 & Supp. III 1997); see also 5 U.S.C. § 5724, 5724a (Supp. IV 1998)(current version). Travel for return for separation is not considered to be PCS travel for the purpose of satisfying the requirements of the statute. Louis David Carter, GSBCA 15381-RELO, 01-1 BCA ¶ 31,137.

Therefore, the JTR in effect when claimant's family incurred the TQSE provided that employees and their families returning from overseas for separation were not eligible for TQSE. JTR C13110-D4 (Apr. 1, 1998). The current version of the JTR is the same. JTR 13115-B4 (Dec. 1, 2000). During the relevant time, the JTR also limited MEA to employees "for whom a PCS is authorized and approved." JTR C9002 (June 1, 1995). The current JTR is substantively the same. JTR C9002-3 (Aug. 1, 2000).

It is unfortunate that the travel voucher was erroneous and that claimant received consistently erroneous advice from numerous sources. Those facts, however, cannot serve to enlarge claimant's entitlements. Louis David Carter; Jeniece K. Stanfield, GSBCA 15281-RELO, 00-2 BCA ¶ 30,954. The agency acted correctly in establishing the debt and we deny the claim. The agency can waive the debt, but such a course is solely in the discretion of the agency. See Gary Morris, GSBCA 15290-RELO, 00-2 BCA ¶ 31,132.

ANTHONY S. BORWICK
Board Judge