

# Board of Contract Appeals

General Services Administration  
Washington, D.C. 20405

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December 20, 2002

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GSBCA 15981-RELO

In the Matter of DENNIS NIELSEN

Dennis Nielsen, Rocky Mount, NC, Claimant.

Lt. Col. Sharon D. Stepp, Comptroller, New York Air National Guard, Scotia, NY,  
appearing for Department of Defense.

**NEILL**, Board Judge.

The comptroller for the New York Air National Guard requests a decision under 31 U.S.C. § 3529 (2000) on whether there is authority to pay a claim presented by Mr. Dennis Nielsen for attorney fees allegedly incurred in conjunction with a decision we rendered in favor of Mr. Nielsen earlier this year. In that decision we concluded that the claimant's agency has incorrectly denied reimbursement for certain real estate costs incurred by the claimant when he sold the home he had occupied as a residence while on active military duty. Dennis Nielsen, GSBCA 15754-RELO, 02-2 BCA ¶ 31,922.

Mr. Nielsen has been invited to comment on the agency's inquiry. The authority which he contends supports the agency's payment of his claim clearly cannot be relied upon by the agency. Neither is it available for this Board's use in favor of claimants, such as himself, who have received a favorable decision from us on travel or relocation claims.

In commenting on the agency's request for our opinion on whether his claim for attorney fees may be paid, Mr. Nielsen explains that he submitted this claim because he believes that the agency was irresponsible and negligent in delaying payment to him. He points out that there are several cases on the Board's web site in which we have awarded legal expenses to contractors who have substantially prevailed in pressing claims against the Government. Mr. Nielsen believes that he is entitled to similar relief since he, too, substantially prevailed on his claim.

Mr. Nielsen is correct in stating that this Board has, on occasion, awarded attorney fees to contractors who have prevailed in proceedings before it. E.g., McTeague Construction v. General Service Administration, GSBCA 15479-C(14765), 01-2 BCA ¶ 31,462, motion for reconsideration denied, 01-2 BCA ¶ 31,526. The statutory authority on which the Board has relied in such cases is found in 5 U.S.C. § 504 (2000). The purpose

of this provision is "to eliminate for the average person the financial disincentive to challenge unreasonable governmental actions." Commissioner, Immigration & Naturalization Service v. Jean, 496 U.S. 154, 163 (1990). The statute reads in part:

An agency that conducts an adversary adjudication shall award, to a prevailing party other than the United States, fees and other expenses incurred by that party in connection with that proceeding, unless the adjudicative officer of the agency finds that the position of the agency was substantially justified or that special circumstances make an award unjust.

5 U.S.C. § 504(a)(1).

The definition of "adversary adjudication" in the same statute includes appeals of contracting officer decisions which this Board hears pursuant to the Contract Disputes Act, 41 U.S.C. §§ 601-613 (2000). It is because of this that Mr. Nielsen correctly states that there are several cases on the Board's web site in which we have awarded legal expenses to contractors. The statute's definition of "adversary adjudication," however, does not extend to decisions which this Board may render pursuant to other statutory authority.

Our authority to settle Mr. Nielsen's original claim against his agency stems from 31 U.S.C. § 3702(a)(3) (2000), which provides that the Administrator of General Services shall settle claims involving expenses incurred by federal civilian employees for official travel and transportation, and for relocation expenses incident to transfers of official duty station. This Board exercises that authority by virtue of a delegation from the Administrator to this Board. Delegation ADM P 5450.39C CHGE 78 (Mar. 21, 2002) (referencing 31 U.S.C. § 3702). Similarly, our authority in this case to respond to an agency inquiry stems from 31 U.S.C. § 3529. Under the same delegation mentioned above, the Administrator has authorized the Board to exercise the authority he has under that statute as well. The definition of "adversary adjudication" in 5 U.S.C. § 504, however, does not extend to any proceeding which the Board might conduct pursuant to these delegations.

In seeking our opinion, the Comptroller of the New York Air National Guard writes that she is aware of no authority which would permit her to pay Mr. Nielsen's claim for attorney fees. We agree. Certainly the authority does not exist under 5 U.S.C. § 504, and we are aware of no similar statute which would permit either this Board or Mr. Nielsen's agency to award fees incurred in a proceeding before this Board to settle a claim for expenses incurred by federal civilian employees for official travel and transportation, or for relocation expenses incident to transfers of official duty station.

In commenting on his claim for attorney fees, Mr. Nielsen has asked that we also address the issue of whether the agency can pay him interest on his original claim. He explains that he has in fact asked the agency for interest as well as attorney fees and wishes to see both issues "put to bed now without further delay." This issue is obviously not ripe for our review. The agency, in requesting our guidance under 31 U.S.C. § 3529, has restricted its inquiry solely to the question of attorney fees. We decline to go beyond the scope of the agency's actual inquiry.

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EDWIN B. NEILL  
Board Judge