

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

April 29, 2003

GSBCA 15995-RELO

In the Matter of BEVERLY J. ORR

Beverly J. Orr, Madison, WI, Claimant.

Elizabeth B. Throckmorton, Policy and Program Development Division, Department of the Army, Alexandria, VA, appearing for Department of the Army.

NEILL, Board Judge.

Claimant, Ms. Beverly J. Orr, is a former civilian employee of the United States Army. The Army states that from approximately 1987 to July 1993, Ms. Orr served continuously under a series of overseas limited (OSL) appointments, i.e., appointments of United States citizens recruited overseas to fill continuing positions in the overseas area, which are neither permanent nor potentially permanent appointments. See 5 CFR 301.201. We are told that Ms. Orr's initial appointment was in Bremerhaven, Germany; that she later served in Frankfurt and Stuttgart; and that on July 12, 1992, while still serving in Stuttgart, she was selected for a position in Belgium. The Army further states that Ms. Orr remained in Belgium for only one year. At that time, management released her from further service rather than extend her OSL appointment.

Ms. Orr was initially denied separation travel back to her former residence in Stuttgart. She successfully challenged this determination, however, and, according to the Army, was reimbursed for travel and transportation back to Stuttgart. Ms. Orr has been far less successful in her persistent efforts to challenge the propriety of the Army's decision to release her from her position in Belgium after only one year. Her complaint has been heard and reviewed in various forums but never, in her opinion, with satisfactory results.

On November 5, 2002, the Board received a request from Ms. Orr that it review a determination made earlier in the year by the Army that she was not entitled to payment of return travel and transportation expenses to the continental United States (CONUS) from Stuttgart, Germany.

In reviewing documentation in the record for this case, the Board initially determined that Ms. Orr's claim, although arising out of her contested release from employment on July 11, 1993, was apparently not raised until sometime in March 2001. Given the six-year

statute of limitation on our authority to decide relocation claims, we asked Ms. Orr whether the present claim had been made before July 12, 1999.

For a number of reasons, which we need not describe here, Ms. Orr was unable to reply promptly to our inquiry. We are now, however, in receipt of a letter from her which addresses our earlier concern regarding the timeliness of her claim. She writes that the present claim for return transportation was first submitted to her agency sometime in late April 2001. Ms. Orr recognizes that her claim is untimely but argues that application of the six-year statute to this case would be unduly harsh. She explains that her late submission of a separate request for return transportation was done only as a last or extreme resort after her labor dispute had "aged without any resolution."

By statute, the claims involving travel or relocation expenses which we have been authorized by the Administrator of General Services to settle, must be received by the Administrator or by the agency which conducts the activity from which the claim arises within six years after the claim accrues. 31 U.S.C. § 3702(b)(1) (2000). It is not within our discretion to waive application of this statutory limitation. By her own admission, Ms. Orr's claim is time-barred. We, therefore, lack the authority to adjudicate it. Frank Hickey, GSBCA 15349-RELO, 01-2 BCA ¶ 31,503; Janice P. Collington, GSBCA 14078-RELO, 97-2 BCA ¶ 29,025. Claimant's request for review of the Army's denial of her request is dismissed.

Before asking the Board to review the Army's denial of her claim for return travel and transportation expenses to CONUS from Stuttgart, Germany, Ms. Orr requested GSA's Deputy Associate Administrator, Office of Transportation and Personal Property, to consider her claim under a test program established for processing claims for which no legal relief is available but which nonetheless are deemed to be meritorious. See 5 U.S.C. § 5739 (2000). The Deputy Associate Administrator declined to act on Ms. Orr's request because the claim had not been referred to her by this Board. Under the test program procedure, this Board first had to decide that the claim could not be granted under applicable statute or regulation. If, after denying the claim, the Board was of the opinion that the claim nonetheless merited relief for equitable considerations, it could forward the claim to the Deputy Associate Administrator for further evaluation. Charles P. Cooluris, GSBCA 15693-RELO, 02-1 BCA ¶ 31,779; Roy Katayama, GSBCA 15605-RELO, 01-2 BCA ¶ 31,542. This test program expired on May 28, 2002.

On November 5, 2002, following the rejection of her request for relief by the Deputy Associate Administrator, Ms. Orr asked that the Board review the Army's rejection of her claim and consider referring it to the Deputy Associate Administrator for favorable treatment. Although the test program and the special authority it provided to the Deputy Associate Administrator have now ended, this Board still retains the ability to refer claims to the Administrator of General Services for further referral to the Congress under the Meritorious Claims Act, 31 U.S.C. § 3702(d). Such claims, however, are, by their nature, highly extraordinary. We see nothing in Ms. Orr's filings that would render her case so remarkable as to make referral appropriate. We therefore decline to recommend that her claim be deemed meritorious for equitable relief by the legislature.

EDWIN B. NEILL
Board Judge