

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

February 25, 2004

GSBCA 16349-RELO

In the Matter of A UNITED STATES SECRET SERVICE EMPLOYEE

A United States Secret Service Employee, Washington, DC, Claimant.

Keith W. Young, Assistant Director, Office of Administration, United States Secret Service, Department of Homeland Security, Washington, DC, appearing for Department of Homeland Security.

BORWICK, Board Judge.

The agency, the Department of Homeland Security, through the United States Secret Service (USSS), requests a decision pursuant to 31 U.S.C. § 3529 (2000) regarding the duty reporting date for the agency's newly appointed Uniformed Duty Officers (UDOs). The question arises because the agency's initial orientation/training site for the UDOs and their initial permanent duty site are in the same geographical area (as defined by the agency) of Washington, D.C. The agency requests an opinion on whether a new appointee's duty reporting date is the date of the appointee's initial arrival for orientation in Washington, D.C., or is the date the appointee begins work in Washington, D.C., after completion of training and graduation from the training course. The agency's question is limited to a newly appointed UDO who has not held previous appointments in the federal service.

Presently the agency considers the new appointee's arrival date for orientation as the date a new appointee reports for permanent duty. We conclude that this policy is in accord with the Federal Travel Regulation (FTR), applicable statute, and case law construing statute and regulation.

Background

The USSS selects new appointees for the UDO positions, which are located in Washington, D.C. The typical appointment letter advises each new appointee of his or her selection for a Schedule B Excepted Appointment as a UDO in Washington, D.C., and the yearly salary. The letter advises that the appointment as a UDO is contingent upon the favorable completion of a background investigation and the satisfactory completion of all required training.

Additionally, the letter advises that the agency will reimburse the new appointee for those relocation benefits allowable for new appointees under the FTR, i.e., costs of transportation for the appointee and the appointee's family, transportation and temporary storage of household goods, and a per diem allowance for travel to Laurel, Maryland, the agency's training site in the Washington suburbs. The agency does not reimburse the new appointee for per diem at Laurel, Maryland.

The agency subjects its new appointees to an extensive training regimen. Upon selection, the agency instructs the appointees to go to the agency's Rowley Training Center (RTC) in Laurel for a one-week orientation into the USSS. The orientation consists of being sworn in as a federal employee, physical fitness assessment, handgun familiarization, and administrative procedures. The agency reports that during orientation, at a scheduled relocation briefing, the employees sign the service agreement required by the FTR as a condition of obtaining relocation benefits.

The appointees then travel to the Federal Law Enforcement Training Center (FLETC) in Artesia, New Mexico, for an additional nine weeks of training. Upon completion of that training the new appointees return to the RTC for their final ten weeks of training.

Upon satisfactory completion of the required training, the appointees graduate and then report for duty as UDOs in the Washington, D.C., area.

The USSS has defined the term "post of duty" as encompassing an area within fifty miles of the employees' residence or within fifty miles of where they report for work daily. The RTC is approximately twenty-two miles from the White House, which is at or near where the appointees will report for duty as UDOs.

The agency states:

[The USSS] has considered the initial arrival to RTC in [Laurel], MD for orientation as the date the new appointee is reporting to the first official station. As a result, the appointee's travel from their [sic] residence (assuming it is outside the Washington, D.C. area) to report to training has constituted transportation of the employee to the first official station. In most cases the appointees do not move their families or transport their household goods until either after their completion of training in FLETC or the second portion of their training at the RTC. As a result, the appointee must generally return to their residence (at their own cost) to move their families and/or transport their household goods.

Furthermore, considering this early date as reporting to the first initial station restricts the appointee's entitlement to per diem during the time in training at [the] RTC.

In questioning its present policy, the agency notes that the appointees are not performing actual and substantial duties during their orientation at Laurel, but are instead undergoing training. The agency, relying on one opinion of this Board and two opinions of

the General Accounting Office (GAO)¹, argues that "the training site may be designated the appointee's duty station for administrative purposes[, but] it should not be used to establish the appointee's entitlement to travel and relocation expenses."

In conclusion, the agency asks the Board:

Are we correct in concluding that the actual reporting date to the first official station for the new Uniformed Division appointee is the earlier of the following two dates:

the date a residence is established in the Washington, D.C. area; or

the date he/she reports to work as a [UDO] upon completion of training and graduation.

Discussion

The FTR provides that a permanent change of station is "the assignment of a new appointee to an official station . . . on a permanent basis." 41 CFR 302-4.1 (2003). It also defines "official station" as the location of the employee's permanent work assignment. 41 CFR 300-3.1. The appointment letter assigns a new appointee to the appointee's permanent duty station of Washington, D.C. The Washington, D.C., area is the location of the new appointee's permanent work assignment and fully meets the FTR's definition of "official station." Thus, as soon as the employee arrives in Washington, he or she is at his or her official station. The fact that the first assignment is for orientation and the second is for training becomes immaterial.

For the purpose of providing relocation benefits for a new appointee, nothing in statute or regulation allows the agency to deem as the reporting date the date that the appointee reports for work after completion of training. Indeed, the statute granting the new appointee limited relocation benefits provides that the agency may pay the appointee travel and transportation expenses "whether or not the individual selected has been appointed at the time of the travel." 5 U.S.C. § 5723(c) (2000). Consequently, we cannot read statute or regulation as permitting that the conditions of appointment--satisfactory completion of the background investigation and completion of training--be completed before a new appointee reports for permanent duty. For administration of the relocation benefits of a new appointee, all that the FTR requires is that the new appointee be assigned to the actual permanent duty post. Here, the permanent duty post is Washington, D.C., and that post is where the new appointee is assigned.

The cases relied upon by the agency for the contrary conclusion are distinguishable. Halcomb and its successor, 60 Comp. Gen. 569, involved the question of whether an agency could designate an orientation or training site (other than the future permanent duty site) as

¹ Charles G. Bakaly, III, GSBCA 14750-RELO, 99-1 BCA ¶ 30,249; 60 Comp. Gen. 569 (1981); Cecil M. Halcomb, 58 Comp. Gen. 744 (1979).

a permanent duty station for the purpose of granting relocation benefits not otherwise available to new appointees. It was in that context that the GAO held:

The location of an employee's permanent duty station presents a question of fact and is not limited by the administrative designation. Such duty station must be where the major part of the employee's duties are performed and where he is expected to spend the greater part of his time. There must be some duties beyond taking the oath, physical examination or job training. In the instant case, the certifying officer says that at the mid-point in training at the FLETC, the trainees are brought to the Washington office for [one] week. That time, together with the time spent when the trainee first reports for swearing in, is normally the total time spent in the Washington office. Thus, the facts indicate that the agency designation of Washington as the first official duty station is erroneous.

60 Comp. Gen. 569, 570-11 (citations omitted); see also Cecil M. Halcomb, 58 Comp. Gen. 744 (1979). The Board's opinion in Bakaly involved the same issue as applied to a residence instead of to an orientation or training site. Here, unlike the cases above, Washington, D.C., is a new appointee's legitimate permanent duty station and also his or her orientation and training site.

The agency argues that, under its present policy, a new appointee is not able to obtain temporary duty per diem during the orientation period in Washington, D.C. This is true; statute provides for an employee's travel entitlements "when traveling on official business away from the employee's designated post of duty." 5 U.S.C. § 5702. The present policy, which establishes Washington, D.C., as the employee's designated post of duty during the new appointee's orientation, means that a new appointee is eligible for travel entitlements during his or her training period in Artesia, New Mexico--but not during the orientation program in Washington, D.C. or the training in nearby Laurel, Maryland.

The agency, therefore, may not deem that the actual reporting date to Washington, D.C., to be the earlier of the date the employee establishes a residence in the Washington, D.C., area or the date that the new appointee reports for work as a UDO upon completion of training and graduation.

ANTHONY S. BORWICK
Board Judge