

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

July 15, 2004

GSBCA 16417-RELO

In the Matter of PATRICIA G. SMITH

Patricia G. Smith, Benton, AR, Claimant.

Shirley L. Autry, Deputy Director, Finance, United States Army Corps of Engineers Finance Center, Millington, TN, appearing for Department of the Army.

DANIELS, Board Judge (Chairman).

A new appointee to federal service in the Department of Defense (DoD), on accepting the position, moved her residence twenty miles closer to her new office. Travel orders issued to the appointee provided that the Government would pay for the cost of shipping her household goods to her new home, and the Government did indeed pay this cost. DoD regulations did not allow the benefit to be authorized, however. The Government is therefore under no obligation to absorb the cost of shipping the goods. At its option, though, the agency may waive its claim to reimbursement by the employee.

Background

The Department of the Army's Corps of Engineers hired Patricia G. Smith to work in its Little Rock, Arkansas, District Office in October 2003. At the time, Ms. Smith lived in Pine Bluff, Arkansas. She had previously been a United States Government employee but was not one when she was hired.

The Corps issued travel orders to Ms. Smith authorizing payment for, among other things, shipment of her household goods under a Government bill of lading. The goods were shipped, and the Government paid the cost involved.

The official in the Little Rock office who approved the orders also prepared a justification which includes the following statements: Ms. Smith provides a skill which the office needed and was in short supply. Pine Bluff is forty-six miles from the Corps' Little Rock office, and the home to which Ms. Smith moved shortly after beginning work with the Corps is twenty-six miles from the office. If Ms. Smith had to commute all the way from Pine Bluff to Little Rock, her commute would be much longer than the one she now has and

the consequent additional costs of commuting would impose a significant financial hardship on her.

An employee in another Corps office later determined that Ms. Smith must repay the Government for the cost of shipping her goods. The reason for this decision is, "The provisions of the JTR [the Defense Department's Joint Travel Regulations], paragraph C5080-F (Short Distance *Transfers*) is clearly intended for transferees only. In accordance with the JTR, paragraph 5080-A1c., short distance transfers do[] not apply to first duty travel."

Discussion

By statute, an agency, "[u]nder regulations prescribed under section 5738 of [title 5 of the United States Code]," may pay for the expenses of shipping a new appointee's household goods and personal effects from the individual's place of residence at the time of assignment to the new duty station. 5 U.S.C. § 5723(a) (2000). The "regulations prescribed under section 5738" are the Federal Travel Regulation (FTR), which is promulgated by the Administrator of General Services. An individual who is returning to the Government after a break in service, like Ms. Smith, is (with an exception not relevant here) treated by the FTR as a new appointee. 41 CFR 301-3.1(b) (2003).

The FTR provides that an agency must generally pay for or reimburse to a new appointee who is eligible for relocation benefits, expenses of transporting the individual's household goods. 41 CFR 302-3.2, -3.4. Special considerations govern short-distance moves, however, whether those moves are by new appointees or transferees. If an individual relocates to a new official station that is less than fifty miles from her old official station, she may receive relocation benefits only if the head of the agency or his designee authorizes them. Authorization is permissible only after two separate determinations are made. First, the agency head or designee must find that providing the benefits is in the interest of the Government. Second, he must find that if the employee does not move, one of the following will occur: (a) the employee's commute will increase by at least ten miles; (b) the commuting time will increase; or (c) increased commuting costs will impose a financial hardship on the employee. 41 CFR 302-2.6.

The FTR also provides that before authorizing relocation benefits, an agency must set internal policies that determine how the agency will implement the FTR's policies. 41 CFR 302-2.100(a). DoD has determined how defense agencies will implement these policies through the issuance of the JTR. JTR Purpose & Authority (Oct. 2003).

The JTR provide that whenever the FTR authorizes "a discretionary travel and transportation entitlement," but the JTR are silent on that matter, the "discretionary FTR authorization . . . is not implemented within DoD." JTR C1001-D. In effect, the JTR is in these instances denying to DoD order-approving officials the discretion to authorize the benefits in question. This sort of restriction, we have held in other contexts, is permissible. Dane P. Summerville, GSBCA 15943-RELO, 03-1 BCA ¶ 32,188; Richard P. Crane, GSBCA 15782-RELO, 02-2 BCA ¶ 31,996.

Among the FTR authorizations of discretionary entitlements which are forbidden to DoD officials is the one permitting agency heads and their designees to grant relocation benefits to new appointees who move less than fifty miles to their first federal duty station. The JTR do not allow agency heads to authorize these benefits to these new appointees.¹ Consequently, the Corps official who issued travel orders to Ms. Smith had no authority to include in those orders the statement that the Government would pay for shipment of her household goods to her new residence.

Because the Government paid for a service it should not have and the service was for the benefit of Ms. Smith, the employee is obligated to repay the Government for the cost of the service. We note, however, that if the head of the agency or other authorized official determines that the collection of the amount from Ms. Smith "would be against equity and good conscience and not in the best interests of the United States," that official may waive the Government's claim to the money. 5 U.S.C. § 5584(a). The Corps may consider, in deciding whether to waive its claim, the fact that Ms. Smith moved under orders which appeared valid and purported to convey benefits which the order-approving official believed were necessary to induce Ms. Smith to take the position she now holds. Jacqueline G. Sablan, GSBCA 15961-TRAV, 03-2 BCA ¶ 32,309; Randall L. Thurman, GSBCA 14067-RELO, 97-2 BCA ¶ 29,160.

STEPHEN M. DANIELS
Board Judge

¹At the time Ms. Smith began her work for the Corps in Little Rock, in October 2003, the JTR provision which contains this rule was paragraph C4050-A.3. Now, after a reorganization of the JTR which took effect on January 1, 2004, the same provision is located at paragraph C5080-A.1.c. The Corps official who cited the latter paragraph was correct on the issue only because the substance of the regulation remained unchanged. Entitlements to relocation benefits are determined by the regulatory provisions that are in effect at the time an employee reports for duty at the new official station, not by the provisions that are in effect at the time an issue arises. 41 CFR 302-2.3; JTR C1050-C.2.b; see Jason A. Knapp, GSBCA 16408-RELO (July 14, 2004); Edward Queair, GSBCA 15714-RELO, 02-1 BCA ¶ 31,757.