

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

June 29, 2005

GSBCA 16596-RELO

In the Matter of JANICE F. STUART

Janice F. Stuart, Beaverton, OR, Claimant.

Karen J. Miller, Finance & Accounting Officer, United States Army Corps of Engineers, Portland District, Portland, OR, appearing for Department of the Army.

DANIELS, Board Judge (Chairman).

The Department of the Army has asked us to reconsider its decision granting relocation benefits to one of its employees, Janice F. Stuart, in connection with the agency's transfer of Ms. Stuart from Alaska to Oregon.

Under the Board's Rules of Procedure, a request for reconsideration in a travel or relocation case "must be received by the Board within 30 calendar days after the date the decision was issued." Rule 407 (48 CFR 6104.7 (2004)). The Board's decision in this case was issued on April 27, 2005. The motion for reconsideration was not filed until June 16, 2005 – fifty calendar days after the date the decision was issued. The motion was untimely filed, so we dismiss it rather than considering its merits.

Because the motion demonstrates that the Army misunderstands our decision, however, we take this opportunity to explain our reasoning once again – we hope more clearly this time. Various statutes treat the State of Alaska in different ways. The Army looks exclusively to 10 U.S.C. § 1586 (2000) for Alaska's status. Under this statute and an implementing executive order, Alaska is considered to be "overseas." But it is "overseas" only "for the purposes of this section." Section 1586 provides that employees assigned to

rotational assignments overseas – including, consequent to executive order, in Alaska – will, in specified circumstances, have the right to return to the position in the United States from which they were assigned. Section 1586 does not say a word about relocation benefits for employees transferred to or from “overseas” (including Alaska), however.

To learn about those benefits, we must look beyond section 1586. Relocation benefits for transferred employees are prescribed in subchapter II of chapter 57 of title 5 of the United States Code. Real estate transaction expenses – the variety of relocation benefits which are at greatest issue in this case – are prescribed in a subsection of that subchapter, 5 U.S.C. § 5724a(d). In this subsection, Congress distinguished between “within the United States” and “outside the United States.” For the purpose of the subsection – indeed, for the purpose of the entire subchapter – the term “United States” includes “the several States.” Alaska is not treated differently from any other state. 5 U.S.C. § 5721(6). Therefore, we concluded, as to the relocation benefit of real estate transaction expenses, a transfer between duty stations between Alaska and any other state is a transfer “within the United States,” and these expenses must be reimbursed in accordance with the regulations which govern transfers between any two of the contiguous forty-eight states.

In its motion, the Army notes its continued belief that the employee’s entitlement to real estate transaction expenses should be governed by 5 U.S.C. § 5722, rather than 5 U.S.C. § 5724a(d). In a letter we received nearly two weeks after the tardy motion was filed, an Army attorney maintains that “[a]s 5 U.S.C. 5722 is governing, . . . I come at this time before the Board to advise that we have no authority to follow this decision without specific authority from Congress.” We write additionally to make clear that these positions are wrong as a matter of law.

Section 5722 of title 5, to which the agency refers, deals with travel and transportation expenses of employees returning from “posts of duty outside the continental United States.” For the purpose of subchapter II of chapter 57 of title 5, which includes section 5722, Alaska is “outside the continental United States.” Because Ms. Stuart returned to Oregon from Alaska, section 5722 governs her travel and transportation expenses. But that section does not address relocation benefits other than travel and transportation expenses. It does not say anything, for example, about reimbursement of real estate transaction expenses incurred by a transferred employee. It therefore does not help us to determine whether Ms. Stuart is entitled to be reimbursed for those expenses. Section 5724a(d), which does address that entitlement, does not treat states like Alaska which are “outside the continental United States” differently from any other states.

Agency counsel’s arrogation to himself of the determination as to whether Ms. Stuart may receive reimbursement of real estate transaction expenses is particularly troubling.

Section 3702 of title 31, United States Code, provides that “[t]he 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.” The Administrator has delegated this authority to the General Services Board of Contract Appeals. ADM P 5450.39C CHGE 80 (Nov. 7, 2002). The Administrator’s delegation states that “[t]he Board’s decisions constitute final administrative action on these claims.” *Id.* Regulation provides that “[t]he agency [against which the claim is filed] shall pay amounts the Board determines are due the claimant.” 48 CFR 6104.8. Thus, under statute and regulation, once the Board has settled a claim, the agency must follow the Board’s decision. The law does not permit an agency to reverse the decision. Nor does it require any further Congressional action as a prerequisite to payment.

STEPHEN M. DANIELS
Board Judge