Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

October 7, 2005

GSBCA 16687-RELO

In the Matter of OPHER HEYMANN

Opher Heymann, Arlington, VA, Claimant.

Judy Hughes, Travel Management and Procedures Office, Defense Finance and Accounting Service, Columbus Center, Columbus, OH, appearing for Department of Defense.

BORWICK, Board Judge.

Mr. Opher Heymann, claimant, seeks reimbursement of temporary quarters subsistence expenses (TQSE) from the Department of the Army, agency, incident to his travel to his first duty station as a new appointee. As a new appointee, claimant was not entitled to reimbursement of TQSE even though the agency's travel authorization purported to authorize reimbursement and even though agency officials in e-mail messages implied he would be reimbursed for TQSE. The agency's reimbursement of claimant's voucher for TQSE would have violated statute, the Federal Travel Regulation (FTR), and the Joint Travel Regulations (JTR). The Board denies the claim.

The record before the Board shows the following. On or about December 15, 2004, the agency by e-mail message advised claimant, who resided in Wurzburg, Germany, that it would offer him a position with the agency at The Pentagon in Washington, D.C. The agency suggested January 24, 2005, as a convenient entry on duty date. Claimant agreed that January 24 would be a practical starting date. Claimant and agency officials discussed reimbursement for TQSE in the e-mail messages; the clear implication from the agency's e-mail messages to claimant was that reimbursement of TQSE would be allowed.

On February 2, the agency issued a retroactive travel authorization, which erroneously noted that claimant had traveled "between official stations" and properly noted claimant's reporting date as January 24, 2005. The authorization purported to grant claimant entitlement to reimbursement of actual TQSE, although the number of days supposedly authorized was not stated. The authorization also granted claimant transportation by commercial air and shipment of household goods.

Invoices in the record before the Board show that claimant rented quarters in Arlington, Virginia, starting on January 19, 2005, and stayed in those quarters until February 18, 2005. Claimant then rented other quarters in Arlington and stayed in those quarters from February 19 through March 20.

On March 14, the agency issued an amendment to claimant's travel authorization purporting to specify the number of days of TQSE for which claimant was eligible (sixty). On June 20, claimant submitted a voucher for reimbursement of $5898.89. On June 22, the agency, for a second time, amended the travel authorization, eliminated the entitlement to TQSE reimbursement, and noted in block 22 of the order that the authorized travel was to claimant's initial duty station.

On or about June 23, 2005, the agency's Permanent Change of Station (PCS) Division denied claimant's reimbursement request for TQSE because he was a new appointee. The denial was referred through the agency's PCS Division and Appeals Travel Branch to the Defense Finance and Accounting Service (DFAS), Travel Management and Procedures Office. On June 27, 2005, DFAS denied the claim because reimbursement of TQSE for new appointees is not permitted under the JTR. DFAS stated that erroneous information and authorizations provide no basis for payment of expenses that are not allowed by statute or regulation. DFAS, at claimant's request, forwarded the matter to this Board as a claim.

Discussion

The agency hired claimant as a new appointee. Statute and regulation provide limited relocation benefits to a new appointee, and reimbursement of TQSE expenses is not one of those benefits. 5 U.S.C. §§ 5723(a) (1)-(3), 5724a (2000); 41 CFR 302-3.2, -3.3 (2004); JTR C5080-B.5. The agency's original travel authorization and first amended authorization that granted claimant reimbursement of TQSE were erroneous and cannot create an entitlement that does not exist in statute and regulation. Put another way, an agency may not pay monies in violation of statute and regulation, even though the travel authorization purported to create the entitlement and an employee relied upon the authorization to his detriment. *Federal Crop Insurance Corp. v. Merrill*, 332 U.S. 380, 384-85 (1947); *Kevin R. Kimiak*, GSBCA 16641-RELO, 05-2 BCA ¶ 33,007; *John J. Churchill*, GSBCA 16419-RELO, 04-2 BCA ¶ 32,698.

The same principle holds true for erroneous written or oral advice that new appointees are eligible for TQSE reimbursement incident to first duty station travel. *Charles M. Russell*, GSBCA 16000-RELO, 03-1 BCA ¶ 32,716.

We understand that claimant is frustrated by the course of events resulting in the agency's seeming to grant claimant an entitlement and then denying reimbursement after claimant incurred the expense. Nonetheless, the agency acted in accordance with statute and regulation in denying reimbursement and we thus can not grant claimant relief.

We have seen many of these cases. We encourage agencies to ensure that their travel and transportation officials provide accurate advice to new appointees as to the proper scope of their first hire relocation benefits, and ensure that travel authorizations are properly prepared so that this situation does not occur.

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ANTHONY S. BORWICK
Board Judge