Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

November 2, 2005

GSBCA 16721-RELO

In the Matter of DAVID W. BROWN

David W. Brown, Gaithersburg, MD, Claimant.

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

DANIELS, Board Judge (Chairman).

When the Defense Contract Management Agency (DCMA) hired David W. Brown in May 2005, it authorized payment to Mr. Brown of temporary quarters subsistence expenses (TQSE) for a period of sixty days. Mr. Brown moved from Florida to Maryland to accept the job. He actually stayed in temporary quarters for more than a month and paid rent for lodging there. When he asked for reimbursement of these expenses, however, the Defense Finance and Accounting Service (DFAS) refused to make payment. Mr. Brown has asked us to review DFAS's determination.

DFAS properly rejected this claim because Mr. Brown was a new appointee to Government service. As we recently pointed out, "Statute and regulation provide limited relocation benefits to a new appointee, and reimbursement of TQSE expenses is not one of those benefits." *Opher Heymann*, GSBCA 16687-RELO (Oct. 7, 2005) (citing 5 U.S.C. §§ 5723(a) (1)-(3) (2000)). Congress has permitted agencies to pay for TQSE incurred by employees who are transferred from one permanent duty station to another, 5 U.S.C. § 5724a(c), but has not authorized agencies to provide a corresponding benefit to new appointees. *Rosemary Schultz*, GSBCA 16703-RELO (Oct. 18, 2005); *John J. Churchill*, GSBCA 16419-RELO, 04-2 BCA ¶ 32,698. In the face of this statutory arrangement, the

fact that Mr. Brown's travel orders stated that DCMA would pay for TQSE he incurred is immaterial. The law prevents an agency from honoring commitments it does not have the power to make. *Jerome A. Dosdall*, GSBCA 16244-RELO, 04-1 BCA ¶ 32,464 (2003) (citing *Office of Personnel Management v. Richmond*, 496 U.S. 414 (1990); *Federal Crop Insurance Corp. v. Merrill*, 332 U.S. 380 (1947)); *Louise C. Mâsse*, GSBCA 15684-RELO, 02-1 BCA ¶ 31,694 (2001) (same).

DFAS regretted having to reject Mr. Brown's claim because it knew that he was an innocent victim of DCMA's error in including in travel orders a benefit which it was precluded by statute from providing. In processing this claim, one DFAS employee commented on DCMA's mistake, "These folks are really creating a mess for their employees." The Board has similarly stated, in ruling in a very similar case, "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." *Heymann*. We reiterate these thoughts here.

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STEPHEN M. DANIELS
Board Judge