Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

March 13, 2006

GSBCA 16811-RELO

In the Matter of BRUCE HIDAKA-GORDON

Bruce Hidaka-Gordon, Bowie, MD, Claimant.

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

DANIELS, Board Judge (Chairman).

A federal employee whose first duty station was outside the United States is not entitled to reimbursement of expenses he incurs in buying a house when he is transferred to a new duty station within the United States.

Background

After several years of federal service, Bruce Hidaka-Gordon resigned his position with the Government in 1997 for family medical reasons.

In 2000, while he was living in Louisville, Kentucky, Mr. Hidaka-Gordon was again hired by the Government, this time for a job with the Department of Defense (DoD) in Okinawa, Japan.

In April 2005, DoD transferred Mr. Hidaka-Gordon from Okinawa to Washington, D.C. The travel orders issued to him by the department authorized reimbursement of real estate expenses. This fact was important to Mr. Hidaka-Gordon. Before accepting the

transfer to Washington, he sought and received confirmation from agency management and human resources officers in Japan that the Government would indeed pay for any expenses he might incur in buying a home in the Washington area.

After arriving in Washington, Mr. Hidaka-Gordon purchased a residence in suburban Maryland. He submitted a voucher for reimbursement of the expenses of buying the house. DoD refused to make payment, maintaining that because Mr. Hidaka-Gordon's posting to Japan was a first duty station of a new appointee, rather than a station to which he was transferred from one in the United States, he was ineligible to receive this benefit.

Discussion

The Defense Finance and Accounting Service (DFAS), which is representing DoD in this case, understands the law correctly. An employee who is transferred from a duty station outside the United States to a duty station within the country is eligible for reimbursement of real estate transaction expenses only if he was previously transferred to the overseas post from a post in the United States. 5 U.S.C. § 5724(d)(2) (2000); 41 CFR 302-11.2(b) (2004); JTR C14000-C.2 note. Mr. Hidaka-Gordon was not transferred to Okinawa from a duty station in the United States. Instead, he went to Okinawa as a new appointee. Therefore, he was not eligible for reimbursement of real estate transaction expenses when he was transferred to Washington.

The fact that Mr. Hidaka-Gordon worked for the Government for several years before taking the job in Okinawa does not alter the conclusion that he was a new appointee, for the purpose of the regulations governing federal travel and relocation benefits, when he went there. Generally, an individual who returns to Government employment after a break in service is considered to be a new appointee for the purpose of these regulations. There is one exception to this rule: an individual who returns to Government service within a year of having been separated as a result of a reduction in force or a transfer of functions is not considered to be a new appointee. 41 CFR 302-3.1(b) (2004); JTR C5080-B.2.b(3). Because Mr. Hidaka-Gordon did not return to Government service within a year of having been separated, and because he was not separated as a result of a reduction in force or a transfer of functions, he does not fall within this exception.

Mr. Hidaka-Gordon is rightfully upset to learn this explanation, having been assured before he left Okinawa that he would be reimbursed for expenses of buying a home in the Washington area. DFAS properly observes that his command in Japan "did him a disservice when they issued orders that erroneously authorized expenses that, by statute, cannot be paid." But there is no way that either DFAS or the Board can right this wrong. Allowing an agency to make a payment for a purpose not authorized by statute or regulation would violate

the Appropriations Clause of the Constitution. U.S. Const. art. I, § 9, cl. 7 ("No money shall be drawn from the Treasury, but in consequence of Appropriations made by Law.") The Supreme Court consequently has made clear that an executive branch employee's promise that the Government will make an "extrastatutory" payment is not binding. Where relevant statute and regulations do not provide for payment for a particular purpose, an agency may not make such payment. *Teresa M. Erickson*, GSBCA 15210-RELO, 00-1 BCA ¶ 30,900 (citing *Office of Personnel Management v. Richmond*, 496 U.S. 414 (1990); *Federal Crop Insurance Corp. v. Merrill*, 332 U.S. 380 (1947)). Although the employee may have relied to his detriment on his agency's assurances, he may not be reimbursed because the law prevents the agency from honoring commitments made in its name by officials who do not have the power to make them. *Alexander S. Button*, GSBCA 16138-RELO, 04-1 BCA ¶ 32,452 (2003); *Louise C. Mâsse*, GSBCA 15684-RELO, 02-1 BCA ¶ 31,694 (2001); *Gary MacLeay*, GSBCA 15394-RELO, 01-1 BCA ¶ 31,210 (2000).

Decision

The claim is denied.

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STEPHEN M. DANIELS
Board Judge