Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

June 12, 2006

GSBCA 16849-RELO

In the Matter of JOSEPH E. COPPLE

Joseph E. Copple, Anchorage, AK, Claimant.

Chuck Parker, Director, Travel Mission Area, Standards and Compliance, Defense Finance and Accounting Service, Indianapolis, IN, appearing for Department of Defense.

BORWICK, Board Judge.

Joseph E. Copple, claimant, is not entitled to payment of the Temporary Quarters Subsistence Allowance (TQSA) incident to his first station transfer from Kansas to Alaska. Payment of TQSA by the Department of the Army (agency) in this instance would violate statute and regulation because Alaska, while outside the Continental United States (CONUS), is not a foreign area, which is a statutory and regulatory predicate to payment of the allowance. The erroneous travel authorization which purported to grant claimant the TQSA cannot enlarge claimant's entitlement beyond that allowed by statute and regulation.

Background

On or about September 9, 2005, the agency hired claimant, who was then residing in Topeka, Kansas, as an intern to work at Fort Richardson, Alaska. On October 12, 2005, the agency issued a travel authorization for claimant's transfer from Topeka, Kansas, to Fort Richardson, Alaska. In its authorization, the agency recognized that the relocation was claimant's "[first] duty move," and that certain benefits were not authorized. The agency, however, granted claimant certain benefits, including per diem for the employee, transportation for the employee and his dependents, shipment of household goods, temporary storage for those goods, shipment of claimant's privately-owned vehicle, the relocation income tax allowance, and the TQSA.

On October 18, claimant proceeded to Fort Richardson and incurred expenses. On October 24, claimant requested the agency to advance claimant TQSA to defray those expenses. From November 1-4, the agency and claimant exchanged e-mail messages. The agency determined that claimant's travel authorization erroneously provided for reimbursement of the TQSA and that claimant was not entitled to an advance of TQSA. The claimant submitted a claim at this Board challenging that determination.

Discussion

We have taken jurisdiction over claims for TQSA, regarding them as within our authority under 31 U.S.C. § 3702(a)(3) to 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. *Steven Fuller*, GSBCA 16337-RELO, 04-1 BCA ¶ 32,623.

Our analysis of this matter begins with the statute authorizing agencies to pay the TQSA. The pertinent part provides:

> a) When Government owned or rented quarters are not provided without charge for an employee in a foreign area, one or more of the following quarters allowances may be granted when applicable:
>
> (1) A temporary subsistence allowance for the reasonable cost of temporary quarters (including meals and laundry expenses) incurred by the employee and his family--
>
> (A) for a period not in excess of 90 days after first arrival at a new post of assignment in a foreign area or a period ending with the occupation of residence quarters, whichever is shorter; and
>
> (B) for a period of not more than 30 days immediately before final departure from the post after the necessary evacuation of residence quarters.

5 U.S.C. § 5923 (2000) (emphasis supplied). The Department of State Standardized Regulations (DSSR) implement this act. *Fuller*; Joint Travel Regulations (JTR) C1003. The DSSR provide that the TQSA is only applicable "after first arrival at a new post in a foreign area." DSSR 121(a). Alaska is outside CONUS, but is not "foreign." The JTR define the term "foreign" as "Any area or country outside the 50 States, District of Columbia, the

Commonwealths of Puerto Rico and the Northern Mariana Islands, Guam, and U.S. territories and possessions." JTR app. A.[1]

The agency's travel authorization that granted claimant reimbursement of TQSA was 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); *Opher Heymann*, GSBCA 16687-RELO, 05-2 BCA ¶ 33,104; *Kevin R. Kimiak*, GSBCA 16641-RELO, 05-2 BCA ¶ 33,007; *John J. Churchill*, GSBCA 16419-RELO, 04-2 BCA ¶ 32,698.

Claimant says that the agency's travel authorization is "contractual and binding." Claimant argues that since he would be subject to termination if he did not carry out his orders, the agency should be bound by its commitments as well, as stated in the travel authorization. While claimant is understandably frustrated, his position is simply not the law. Federal employees derive benefits and emoluments of their position from appointment, not from a contractual or quasi-contractual relationship with the Government. *Nancy C. Johnson*, GSBCA 16612-RELO, 05-1 BCA ¶ 32,931 (citing *Chu v. United States*, 773 F.2d 1226 (Fed. Cir. 1985)). Consequently, the relations between the Government and its employees are governed strictly by statute and regulation, not the law of contracts. *Johnson*. Here, both statute and regulation limit payment of TQSA to employees who have transferred to a foreign area. Claimant did not transfer to a foreign area; he transferred to the State of Alaska; thus, payment of the TQSA would violate the law.

Decision

The Board denies the claim.

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ANTHONY S. BORWICK
Board Judge

[1] Depending on the law involved, Alaska is treated variously as inside or outside the United States for the purposes of determining whether benefits are available. *See, e.g., Janice F. Stuart*, GSBCA 16596-RELO, 05-2 BCA ¶ 33,024. We apply the law applicable to TQSA.