

Board of Contract Appeals
General Services Administration
Washington, D.C. 20405

August 6, 2002

GSBCA 15873-TRAV

In the Matter of FREDERIC S. NEWMAN, JR.

Frederic S. Newman, Jr., APO Area Pacific, Claimant.

M. LaPrell Murphy, Deputy Assistant Chief of Staff (Civilian Personnel), Headquarters, Eighth United States Army, Department of the Army, APO Area Pacific, appearing for Department of Defense.

DeGRAFF, Board Judge.

An agency does not have to authorize educational travel unless an employee shows that the employee's dependent will be returning to school. An agency does not have to approve travel that occurs without authorization.

Background

Frederic S. Newman, Jr. is a civilian employee of the Department of Defense (DoD) in Korea. On October 1, 2001, Mr. Newman asked DoD to authorize his daughter to travel, at government expense, from Korea to the United States where she would attend college. Although a senior management official in Mr. Newman's office signed a travel authorization, the office that held the authority to issue a travel authorization was the Civilian Personnel Advisory Center (CPAC). On October 15, the CPAC told Mr. Newman that in order to obtain a travel authorization, he needed to provide a certification from his daughter's college stating that she was going to be a student there during the upcoming semester. The CPAC also suggested that if Mr. Newman had any questions, he should stop by the CPAC office and talk to someone. When Mr. Newman had difficulty obtaining such a certification, he purchased his daughter's airline ticket with his own funds (\$437.90). His daughter returned to the United States on December 29, 2001, and enrolled in college for the semester that began in January 2002.

In February 2002, Mr. Newman asked DoD to reimburse him for the cost of his daughter's airline ticket. Mr. Newman said that his daughter's college's policy was not to provide a certification stating that someone was a student there until after the student began

attending classes. DoD suggested that Mr. Newman provide some evidence to show that the school would not have provided a certification in advance of his daughter's travel, but he did not do so. Mr. Newman also said that before his daughter traveled, he did not have any documentation from the school to show that she was going to return for the following semester. The CPAC said that although other employees have had difficulty obtaining a certification of a student's status before the student actually returns to school, this was the first case in which an employee was unable to produce some sort of evidence from the school to show that the student would be returning there.

DoD decided to deny Mr. Newman's request because his daughter traveled without an authorization being issued, and DoD did not find that any urgent or unusual circumstance prevented the authorization from being issued before the travel occurred. DoD concluded that the circumstance that prevented the authorization from being issued was Mr. Newman's inability to provide evidence to show that his daughter would be returning to college in the United States. Mr. Newman asks us to review DoD's decision.

Discussion

Before we turn to the merits, we must first determine whether settling a claim for educational travel lies within the scope of our authority. We are authorized 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." 31 U.S.C. § 3702(a)(3)(2000). We routinely settle claims involving expenses incurred for travel, transportation, and relocation expenses authorized by chapter 57 of title 5, United States Code. The payment of educational travel, however, is addressed in chapter 59 of title 5, which authorizes the payment of allowances.

We have concluded that some claims for allowances authorized by chapter 59 are claims that involve expenses incurred by employees for relocation expenses, while other claims for allowances do not involve such expenses. For example, we have resolved claims for temporary quarters subsistence allowances, including temporary lodging allowances, because the temporary quarters subsistence allowance is more like a relocation expense than an allowance. Michael J. Krell, GSBCA 13710-RELO, 98-2 BCA ¶ 30,050; Susan Drach, GSBCA 13863-RELO, 98-1 BCA ¶ 29,442 (1997). We have decided that a claim for a living quarters allowance is not a claim involving an expense of travel, transportation, or relocation, because a living quarters allowance accrues to an employee after he has traveled to a place and relocated there. Such a payment is more like compensation than a relocation expense. Donald E. Guenther, GSBCA 14032-RELO, 97-1 BCA ¶ 28,795.

In addition to the quarters allowances discussed above, chapter 59 also provides that an employee in a foreign area may receive cost of living allowances. 5 U.S.C. § 5924 (2000). One type of cost of living allowance is an education allowance, which is paid in order for an employee to obtain educational services for a dependent as would ordinarily be provided for free at an American public school. 5 U.S.C. § 5924(4)(A).¹ A second type of cost of living

¹ Similar assistance is authorized by 20 U.S.C. § 926 (2000), for military members and civilian employees of the Department of Defense when an overseas Department of Defense

allowance is the payment of travel costs so that a dependent can take one trip per year to and from a school in the United States. 5 U.S.C. § 5924(4)(B). Both the education allowance and the payment for educational travel are meant to assist an employee with the extraordinary and necessary expenses, not otherwise compensated for and incurred because of the employee's service in a foreign area, of providing an adequate education for the employee's dependents. 5 U.S.C. § 5924(4).

In the early 1980s, the General Accounting Office (GAO) had the authority to settle claims involving travel expenses and it also had the authority to waive overpayments of pay and allowances. It did not yet, however, have the authority to waive overpayments of travel and transportation expenses. B-209292 (Feb. 1, 1983); B-202346 (Sept. 28, 1981). When GAO was asked to waive an overpayment for educational travel, it decided that it could not do so because even though the statutory authorization for educational travel falls under the heading of cost of living allowances, the amounts paid were actually for travel and transportation expenses. The Comptroller General explained:

While section 5924 is generally entitled "Cost-of-living allowances," the travel expenses authorized by subsection 5924(4)(B) for dependents attending college are in addition to the educational allowance authorized by subsection 5924(4)(A). Prior to enactment of the Overseas Differentials and Allowances Act, Foreign Service employees had been authorized distinct entitlement to an educational allowance under 22 U.S.C. § 1131(2)(iv) (1958) and educational travel expenses under 22 U.S.C. § 1136(9) (1958). As explained in S. Rept. No. 1647 [86th Cong., 2d. Sess. (1960)], Section 221 "consolidated" the travel payment authority and extended it to nonforeign-affairs agencies. Its consolidation under 5 U.S.C. § 5924(4) with the education allowance authority does not change the character of the travel expense payment authorized. The payment in question is an erroneous payment of travel and transportation expenses and, therefore, it is excluded from consideration for waiver under 5 U.S.C. § 5584.

B-209292 at 2.

After examining the history of the statute and GAO's decisions, we conclude that we have the authority to settle claims for educational travel. Although the payment for educational travel is authorized in chapter 59 of title 5, which provides for the payment of allowances, a claim for educational travel involves expenses incurred by an employee for official travel and transportation of the employee's dependents. As such, the claim falls within our authority to settle.

Turning to the merits, we note that the authorizing statute does not require an agency to pay for educational travel. The statute leaves it to the discretion of the agency whether to authorize educational travel when it provides that an agency "may" pay for such travel. 5 U.S.C. § 5924. The statute is implemented by the Department of State Standardized

dependents school is not available. The regulations implementing this provision are found at 32 CFR pt. 71 (2001).

Regulations (DSSR), which also provide that an agency "may" authorize payment or reimbursement to the employee for educational travel expenses. DSSR § 283. The issue here, then, is whether DoD abused its discretion either when it did not authorize educational travel for Mr. Newman's daughter before she traveled to the United States, or when it did not approve her travel after the fact.²

DoD did not abuse its discretion when it decided not to authorize educational travel before Mr. Newman's daughter returned to the United States. The purpose of the benefit afforded by the statute is to provide for the travel of a dependent who is attending school in the United States. Before DoD issues a travel authorization for educational travel, it is understandable that DoD wants to see some evidence that a dependent will actually be enrolled in school. Before Mr. Newman's daughter traveled, Mr. Newman did not provide DoD with anything to show that his daughter was returning to the United States to attend school. DoD's refusal to issue a travel authorization in such circumstances was a responsible exercise of its discretion.

In some circumstances, an agency can approve travel after it occurs. The DSSR provides that educational travel shall be paid or reimbursed in accordance with the Federal Travel Regulation (FTR) and the implementing regulations of the responsible Government agency. DSSR § 285.2. According to the FTR, if it is not practicable or possible to obtain a travel authorization before travel occurs, the agency may approve the reimbursement of travel expenses after the travel is completed. 41 CFR 301-2.1 (2001). The implementing regulations that apply to Mr. Newman as a civilian employee of DoD are the Joint Travel Regulations (JTR), which provide that travel orders should be issued before travel begins unless an urgent or unusual situation prevents the orders from being issued. JTR C3050 (Dec. 1, 1999). The JTR allow for a confirming travel authorization to be issued after travel is performed if the travel was performed pursuant to proper oral, letter, or message authority, and if the official who directed the travel justifies the delay in issuing a travel authorization and ensures that confirming travel orders are issued as promptly as possible. JTR C3051.

DoD did not abuse its discretion when it decided not to approve Mr. Newman's daughter's travel after it occurred. No urgent situation prevented DoD from issuing a travel authorization before his daughter traveled. Mr. Newman could have obtained a travel authorization if he had provided a certification from her school stating that she was going to be a student there during the upcoming semester. If the school had a policy of not providing such a certification until after a student began attending classes, Mr. Newman had more than two months before his daughter traveled to discuss the situation with the CPAC, to establish that the school would not provide a certification in advance of his daughter's travel, and to provide CPAC with some sort of evidence from the school to show that his daughter would be returning there. DoD reasonably concluded that a confirming travel authorization does not have to be issued because there was no urgent situation that caused Mr. Newman's daughter to travel without an authorization, and the CPAC did not provide Mr. Newman with authority for his daughter's travel before she returned to the United States.

² Authorizations are given in advance of an event, while approvals are given after the fact. Samuel G. Baker, GSBCA 15408-RELO, 01-1 BCA ¶ 31,276, at 154,468-89; J. David Blanchet, B-246270 (May 19, 1992).

The claim is denied.

MARTHA H. DeGRAFF
Board Judge