UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

March 29, 2007

CBCA 486-TRAV

In the Matter of MANUEL S. FIGUEROA

Manuel S. Figueroa, APO Area Europe, Claimant.

Laura Vogel, Human Resources, Department of Defense Education Activity, Arlington, VA, appearing for Department of Defense.

HYATT, Board Judge.

Claimant, Manuel S. Figueroa, is an educator formerly employed by the Department of Defense Dependents Schools (DoDDS) in Wiesbaden, Germany. DoDDS is a component of the Department of Defense Education Activity (DoDEA). Mr. Figueroa contends that DoDEA has improperly disallowed his claim for separation travel benefits for the return trip to the United States following his retirement from his teaching position.

Background

Mr. Figueroa moved overseas as a dependent of his spouse, Gloria Figueroa, who transferred from El Paso, Texas, to Frankfurt, Germany, as an employee of the Army. After the Figueroas moved to Germany, Mr. Figueroa was hired, in August 1987, for a teaching position with DoDDS in Frankfurt. No transportation agreement was signed in connection with this hiring action because Mr. Figueroa was a local hire.

In April 1995, claimant was notified that the Frankfurt area schools would be closed. He was offered a management-directed reassignment through the DoDDS transfer program to Okinawa, Japan, for the following school year. Mr. Figueroa accepted the transfer, but asked that DoDDS continue to try to place him in Germany because an assignment outside Germany would "force a family separation."

In conjunction with the proposed reassignment to Okinawa, claimant signed a one-year transportation agreement on May 24, 1995, and was issued permanent change of station (PCS) orders from Frankfort, Germany to Okinawa, Japan. On June 14, 1995, however, before he had actually relocated to Okinawa, Mr. Figueroa was offered a position at a school in Wiesbaden, Germany. Mr. Figueroa accepted this assignment in order to remain with his spouse. As a result, the reassignment to Okinawa was rescinded; the travel orders, which had not been used, were canceled; and the transportation agreement signed in connection with the proposed move never took effect. No transportation agreement was ever negotiated or signed for the teaching positions that Mr. Figueroa held in Germany.

Mr. Figueroa taught at the Wiesbaden school until his retirement. The teaching assignment in Wiesbaden did not require a permanent change of station move. When the reassignment to the school in Wiesbaden took effect, this school was closer to claimant's residence in Germany than was the school in Frankfurt. No PCS orders were ever issued for claimant's reassignment to the Wiesbaden school.

Sometime prior to claimant's retirement, Mrs. Figueroa made inquiries concerning relocation benefits, specifically as to the amount of household goods the couple would be permitted to ship. A human resources specialist in the field concluded that each member of the household had separate return travel rights, and responded that Mr. and Mrs. Figueroa would each be eligible to ship 18,000 pounds of household goods back to the United States.

Upon his retirement in June 2006, Mr. Figueroa applied for separation benefits. At that time, he was informed that as a local hire in Germany, he was not eligible for separation benefits. He was told that, instead, his eligibility for return travel and transportation of household goods would be as a dependent of his sponsor, his wife.

Mr. Figueroa challenges the agency's response to his claim, contending that he is in fact eligible for such benefits under his interpretation of 5 U.S.C. § 5722.

Discussion

DoDEA has properly determined that claimant is ineligible for separation benefits on the ground that he was a local hire in Germany. Under the statutory provision in effect when Mr. Figueroa was hired, an agency could pay the travel and transportation "expenses on the return of an employee from his post of duty outside the continental United States to the place of his actual residence at the time of assignment to duty outside the continental United States." 5 U.S.C. § 5722(a)(2) (1988). As this statute makes clear, the agency's obligation to pay for the travel and transportation expenses of an employee returning from service overseas is contingent on the employee's having been relocated from the continental United

States to that overseas duty in the first place. The Joint Travel Regulations (JTR) provision in effect at the time of Mr. Figueroa's hire provided that, to be eligible for this benefit, an employee must have completed a specified period of employment as set forth in a written service agreement. JTR C4200. Another JTR provision made clear that employees hired locally overseas without a written service agreement were not eligible for separation travel to return to the United States. JTR C4204.

In addressing similar claims concerning the entitlement of locally hired individuals to return travel benefits at the conclusion of employment overseas, we have stated that:

> [I]n light of the limiting language of the statute and the JTR's implementation of the statute, . . . a claimant seeking return travel to the United States from an OCONUS [outside the continental United States] location, must establish that he or she was transferred as a government employee to the OCONUS location or have been specifically authorized to receive the benefit by the agency as a local hire.

Douglas R. Dorrer, GSBCA 16698-TRAV, 06-1 BCA ¶ 33,227, at 164,648-49 (citing *Rebecca B. Harpole*, GSBCA 16589-TRAV, 05-2 BCA ¶ 33,041).

Mr. Figueroa's argument is premised upon his interpretation of 5 U.S.C. § 5722(c), which provides that "[a]n agency may pay expenses under subsection (a)(2) of this section only after the individual has served for a minimum period of one school year . . . if employed in a teaching position, except as a substitute. . . ." Claimant reasons that since he served in Germany as a teacher in the Defense Department schools for approximately nineteen years, he should be eligible for the benefit prescribed by section 5722(a)(2).

Mr. Figueroa's interpretation of this provision fails to consider 5 U.S.C. § 5722 in its entirety. Under section (a)(2), agencies may only reimburse return travel and transportation expenses for those employees who were transferred from the continental United States to an overseas location in the first place. Section (c) does not establish an independent basis for reimbursement and has no application to employees who were hired for the first time at the overseas location. The requirement to serve for a period of one year in the overseas position is an additional requirement that must be met for the transferred employee to qualify for this benefit.

Mr. Figueroa's argument that he signed a transportation agreement in 1995 in anticipation of the proposed, but subsequently canceled, transfer to Okinawa similarly misses the point. That transportation agreement never took effect, since claimant never actually

transferred, but opted instead to remain in Germany to be with his spouse when that opportunity arose. As such, this document has no bearing on claimant's entitlement to return travel and transportation expenses to the United States from Germany.

Since claimant was hired by DoDDS in Germany after he had already established residence there with his spouse, he has no independent entitlement to return travel and transportation expenses. Although it is unfortunate that the Figueroas were incorrectly advised that they would qualify independently for return travel and transportation, and that each of them could ship up to 18,000 pounds of household goods at government expense, erroneous advice of this nature cannot serve as a basis for expanding claimant's entitlements. *See, e.g.*, *Joseph E. Copple*, GSBCA 16849-RELO, 06-2 BCA ¶ 33,332, at 165,290 (citing *Federal Crop Insurance Corp. v. Merrill*, 322 U.S. 380, 384-85 (1947)).

Decision

The claim is denied.

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CATHERINE B. HYATT
Board Judge