



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

July 18, 2007

CBCA 733-RELO

In the Matter of MAXIA DONG

Maxia Dong, Loveland, Ohio, Claimant.

Betty Miller-Barnard, Chief, Financial Services Branch, Public Health Service, Centers for Disease Control and Prevention, Department of Health and Human Services, Washington, DC, appearing for Department of Health and Human Services.

SOMERS, Board Judge.

Under 31 U.S.C. § 3529 (2000), a disbursing or certifying official or agency head may request a decision from the Board regarding expenses incurred by a federal civilian employee for official travel and relocation expenses incident to a transfer of official duty station. The Board's response to the agency's request is referred to as an "advance decision." *Danny Dean Butrick*, CBCA 515-RELO, 07-1 BCA ¶ 33,527; *Andrew W. Frank*, GSBGA-16919-RELO, 06-2 BCA ¶ 33,364.

The Department of Health and Human Services (HHS) has asked the Board whether it can reimburse an employee for transferee expenses under the Federal Travel Regulation (FTR) when, prior to being hired as a Title 5 employee, the employee had been a senior service fellow for the agency serving a two-year appointment under 42 U.S.C. § 209(g). For the reasons set forth below, we conclude that it can.

Background

_____ In August 2005, the agency, the Public Health Service, Centers for Disease Control and Prevention, Department of Health and Human Services, appointed Maxia Dong to a position as a full-time senior service fellow with a duty station in Atlanta, Georgia. The statute governing her appointment, 42 U.S.C. § 209(g) ("Designation for fellowships; duties; pay"), states:

In accordance with regulations, individual scientists, other than commissioned officers of the Service, may be designated by the Surgeon General to receive fellowships, appointed for duty with the Service without regard to the civil service laws, may hold their fellowships under conditions prescribed therein, and may be assigned for studies or investigations either in this country or abroad during the terms of their fellowships.

Ms. Dong's appointment started on August 7, 2005, with a termination date of August 4, 2007.

In December 2006, Ms. Dong accepted a GS-14 position as a Research Health Scientist at the National Institute of Occupational Safety and Health in Cincinnati, Ohio. Effective December 10, 2006, Ms. Dong's status changed from a senior service fellow to a permanent Title 5 career conditional appointee with no break in service. The agency calculated Ms. Dong's service computation date to be August 7, 2005, the initial date of her service as a senior service fellow.

Discussion

The issue here is whether Ms. Dong is considered to be a "new appointee" or a "transferee" for relocation benefit purposes under the FTR. New appointees do not receive the same benefits as transferred employees.

A "new appointee" is defined by the FTR as "an individual who is employed with the federal government for the very first time." 41 CFR 302-3.1 (2006). A new appointee is entitled to certain benefits when he or she moves to the duty station from his or her place of residence at the time of appointment. 5 U.S.C. §§ 5722, 5723; *Terrance A. Reedy*, GSBCA 16797-RELO, 06-2 BCA ¶ 33,307. A transferred employee, defined as "an employee who transfers from one official station to another," 41 CFR 302-3.100, is entitled to a broader group of relocation expenses than those for new appointees. 5 U.S.C. § 5724(a) (2005); *Wendy Castineira*, GSBCA 15092-RELO, 00-1 BCA ¶ 30,740 (1999); *Charles G. Bakaly, III*, GSBCA 14750-RELO, 99-1 BCA ¶ 30,249, at 149,599 (new appointees are not entitled to reimbursement for certain expenses allowable to transferees, including per diem of family members, the cost of a househunting trip, subsistence while occupying temporary quarters, miscellaneous expense allowance, residence sale and purchase expenses, lease breaking expenses, and relocation expenses).

So long as a change of official station is authorized or approved by the head of an

agency or other designated official, and if the employee transfers from one official duty station to another for permanent duty, the employee is entitled to relocation benefits, provided that the transfer is in the interest of the Government and not primarily for the benefit of the employee. 5 U.S.C. §§ 5724, 5724a; 41 CFR 302-1.3(a) (2006); *Timothy C. Ford*, GSBCA 15719-RELO, 02-1 BCA ¶ 31,752. As the General Services Board of Contract Appeals (GSBCA) explained in *Gregory M. Chaklos*, GSBCA 15685-RELO, 02-1 BCA ¶ 31,773, at 156,911, and reiterated in *Ford*, 02-1 BCA at 156,839, the statutes and regulations that govern relocation benefits do not define the word “transfer.” A long line of Comptroller General decisions, however, establishes that when the word “transfer” is used in statutes and regulations governing relocation expenses, it means “a change of official station without a break in service of one workday or more.” *Gregory A. Akers*, B-197771 (Aug. 11, 1981) (citing cases).

When Ms. Dong left her permanent duty station at Atlanta, Georgia, and reported for permanent duty in Cincinnati, Ohio, her official station changed. Ms. Dong had no break in service. The fact that Ms. Dong’s status changed from that of a senior service fellow to a permanent career conditional employee had no impact upon her entitlement to relocation benefits. In analogous situations, we have determined that it makes no difference whether an employee’s appointment is temporary or permanent. *See Ford; Chaklos*. The words “transferred from one official station to another for permanent duty” refer to “a change in the permanent duty station of an employee without a break in service and not to the tenure of [her] appointment.” *Ford*, 02-1 BCA at 156,839 (citing *Thomas N. Wikstrom*, 59 Comp. Gen. 374, 375 (1980); *Mary M. Rydquist*, B-164501 (July 10, 1968); 27 Comp. Gen. 757 (1948); 22 Comp. Gen. 219 (1942)).

In a case similar to this, the GSBCA found that an employee transferring from a Department of Defense non-appropriated funds entity to a civilian agency is entitled to the authorized and allowable relocation allowances under the FTR if the employee transfers in the interest of the Government from one agency duty station to another for permanent duty. *See Emma Jane Medina*, GSBCA 16136-RELO, 04-1 BCA ¶ 32,423 (2003). The regulations provide additional support for the conclusion that a senior service fellow is regarded as a federal employee entitled to benefits accruing to federal employees. *See* 42 CFR 61.37(b)(2) (“a service fellow may be authorized personal travel allowances or transportation and per diem, travel allowances or transportation for his or her immediate family, and transportation of household goods and personal effects, in conjunction with travel authorized by the Secretary . . . for any change of duty station ordered by the Service during the term of the fellowship”); *id.* 61.37(c) (“In addition to other benefits provided herein, service fellows shall be entitled to benefits provided by law or regulation for other civilian employees of the public health service.”). Also supporting this conclusion is Ms. Dong’s initial letter of appointment as a senior fellow, in which the agency indicated that

Ms. Dong would be entitled to federal employee health benefits and life insurance benefits, and would accrue the same annual and sick leave benefits as any other Federal employee.

In its request for an advisory opinion, the agency states its belief that a previous GSBCA decision, *Synita Revels*, GSBCA 14935-RELO, 00-1 BCA ¶ 30,716 (1999), precludes the agency from reimbursing senior fellows for relocation benefits. We do not agree with the agency's interpretation of that decision. In *Revels*, the claimant sought interest on the agency's delayed reimbursement for a transferred employee's real estate transactions. We denied the claim on the grounds that no statute authorized the payment of interest on delayed reimbursement of relocation expenses. The facts of that decision are distinguishable from the circumstances here. In this case, the claimant is not seeking interest on delayed reimbursement. Rather, she is seeking reimbursement for relocation benefits as a transferred employee. Nothing in the *Revels* decision addresses the issue of whether a senior service fellow can be considered a federal employee entitled to transferee relocation benefits in the event the service fellow becomes a career employee and changes official duty stations. Therefore, that case is inapposite.

Decision

We find that Ms. Dong is entitled to the same relocation benefits granted to any other transferred employee. We return the appeal for agency action.

JERI KAYLENE SOMERS
Board Judge