



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

March 20, 2008

CBCA 1079-TRAV

In the Matter of MARK J. LUMER

Mark J. Lumer, Springfield, VA, Claimant.

John St. Myers, Defense Finance and Accounting Service, Indianapolis, IN, appearing for Department of Defense.

BORWICK, Board Judge.

This matter involves the United States Department of the Army, agency, and its employee Mr. Mark J. Lumer. The Defense Finance and Accounting Service (DFAS) purported to submit on behalf of the employee and the agency a claim to this Board challenging a DFAS decision concerning recoupment of a temporary duty (TDY) lodging allowance the agency had paid Mr. Lumer. Because the employee has not submitted a claim to this Board under 31 U.S.C. § 3702 and because the agency has not requested a decision under 31 U.S.C. § 3529, we dismiss this matter for lack of jurisdiction.

Background

In a three and one-quarter page detailed presentation to the Board, DFAS states that it has determined that the agency overpaid Mr. Lumer \$12,092 as a lodging expense allowance while on frequent TDY in Huntsville, Alabama. According to DFAS, Mr. Lumer was reimbursed for allegedly unallowable expenses of a condominium he had purchased at the TDY site.

In forwarding the matter to this Board, DFAS states that the employee maintains that those costs have been reimbursed for ten years, that he claimed the costs in good faith based on guidance he received from his command, and that the amounts paid were substantially below what it would have cost the Government had the employee stayed in a hotel while on

TDY, thus saving the Government money. DFAS states that “because of these factors, Mr. Lumer and his Command request an appeal of the DFAS decision.”

In a colorful rejoinder, Mr. Lumer denies he has submitted a claim to this Board:

Since DFAS has never asked me to repay any funds, there has never been [a claim] made by me.¹ Furthermore, the Deputy Commander at the US Army Space and Missile Defense Command . . . denied he has issued such [a claim] and has stated to his best knowledge and belief that no one in the Command has made such [a claim]. I have not authorized anyone to make [a claim] on my behalf.

The Deputy Commander of the agency’s Space and Missile Defense Command in an e-mail message confirms Mr. Lumer’s statements regarding the Space and Missile Defense Command not submitting a claim.

Discussion

Statute provides:

(a) Except as provided in this chapter or another law, all claims of or against the United States Government shall be settled as follows:

. . . .

(3) The Administrator of General Services shall 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.

. . . .

(b)(1) A claim against the Government presented under this section must contain the signature and address of the claimant or an authorized representative.

¹ We substituted the proper term “claim” in brackets where the employee has used the improper term “appeal.”

31 U.S.C. § 3702 (2000).

Statute also provides:

(a) A disbursing or certifying official or the head of an agency may request a decision from the Comptroller General on a question involving--

(1) a payment the disbursing official or head of the agency will make; or

(2) a voucher presented to a certifying official for certification.

(b)(1) Except as provided in paragraph (2), the Comptroller General shall issue a decision requested under this section.

(2) A decision requested under this section concerning a function transferred to or vested in the Director of the Office of Management and Budget under section 211(a) of the Legislative Branch Appropriations Act, 1996 (109 Stat. 535), as in effect immediately before the effective date of title II of the General Accounting Office Act of 1996, or under this Act, shall be issued--

(A) by the Director of the Office of Management and Budget, except as provided in subparagraph (B); or

(B) in the case of a function delegated by the Director to another agency, by the head of the agency to which the function was delegated.

31 U.S.C. § 3529. The Director of the Office of Management and Budget delegated his authority under this section regarding federal employee and travel relocation matters to the Administrator of General Services.

In short, statute, after re-delegation, provides the Administrator of General Services the authority to: (1) settle claims submitted by employees or their authorized representatives concerning expenses incurred by federal civilian employees for official travel and (2) to render decisions (popularly known as “advance decisions”) on payments the disbursing official or head of the agency will make or on a voucher presented to a certifying official for certification.

The Administrator delegated these functions to the General Services Board of Contract Appeals. Delegation from Acting Administrator of General Services (July 17, 1996). Those functions have been redelegated to the Civilian Board of Contract Appeals after the enactment of the National Defense Authorization Act for Fiscal Year 2006, Pub. L. No. 109-163, § 847, 119 Stat. 3136.

The Board has established procedural rules governing travel claims. The Board's rules require that a written claim must be filed by the claimant; the claimant's authorized representative; or the agency, at claimant's request, on behalf of the claimant. Rule 402 (a)(1), (2) (72 Fed. Reg. 36,794, 36,818 (July 5, 2007)). In this matter, Mr. Lumer did not file a claim, nor did he request the agency to submit a claim on his behalf.

The Board's rules implement 31 U.S.C. § 3529. If, upon receipt of the documents from claimant, the agency is uncertain about the suitability of the claim for payment, it may then request an advance decision from the Board. The agency is required to: (1) explain in writing why the certifying official, disbursing official, or agency head is seeking an advance decision, rather than taking action on his or her own initiative; (2) state the question(s) presented and include citations to applicable statutes, regulations and cases; and (3) include any other information the official believes the Board should consider. Rule 502(a)(2).

Here DFAS presented a submission of three and one-quarter single-spaced pages explaining in detail why it concluded Mr. Lumer owed the Government \$12,092. DFAS was not in that submission asking for an opinion on a matter about which a certifying official possessed doubt.

Since neither the employee, nor the agency acting at the employee's request, submitted a claim to the Board pursuant to 31 U.S.C. § 3702, and since the agency has not requested an advance decision under 31 U.S.C. § 3529, this matter must be dismissed for lack of jurisdiction. *Alexander J. Qatsha*, GSBCA 15494-RELO, 01-1 BCA ¶ 31,364.

Decision

This matter is dismissed.

ANTHONY S. BORWICK
Board Judge

