



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

July 20, 2009

CBCA 1519-RELO

In the Matter of THOMAS W. JUNG

Thomas W. Jung, Pine Bush, NY, Claimant.

Gary Fassett, Personnel Technician, Air Force Personnel Center, Randolph Air Force Base, TX, appearing for the Department of the Air Force.

SHERIDAN, Board Judge.

Claimant, Thomas W. Jung, has requested the Board's review of the agency's determination that he was not entitled to reimbursement for the costs of shipment of his household goods (HHG). Because claimant stayed at his last duty station outside the continental United States (OCONUS) after he resigned from his position with the United States Air Force (USAF), and neither shipped the HHG in a timely fashion nor obtained an appropriate extension of time in which to ship the HHG, claimant lost his allowance for shipment of his HHG. We affirm the agency's denial of the claim.

Background

Claimant was a civilian employee of the USAF at Ramstein Air Base (Ramstein), Germany, from July 2001 through December 2006. On July 15, 2004, claimant signed a transportation agreement (DD Form 1617) providing that upon completion of twenty-three months of duty, he would be eligible for travel and transportation expenses, including those of the movement and storage of HHG, incident to his transfer to and from this OCONUS location. Claimant resigned from the civil service effective December 8, 2006.

Upon leaving the USAF, claimant remained OCONUS and took a position with a defense contractor located in Germany, where he was employed from December 2006 until November 2008. According to claimant, his son has “special needs” and he elected to stay in Germany to assist his son with enrolling at the University of London.

In October 2008, claimant requested permanent change of station (PCS) orders to move his family and HHG back to the United States. Headquarters Air Force Personnel Center, at Randolph Air Force Base, concluded that payment for HHG shipment was precluded because claimant’s travel allowance for shipment of HHG expired when the HHG were not shipped in a timely fashion. The record reveals that upon resigning from the USAF in December 2006, claimant failed to submit any requests for extensions of time to delay use of his HHG transportation allowance. Claimant requested orders for shipment of his HHG approximately twenty-two months after he had separated from government service.

Claimant asserts that when he retired from the Government, he was not told that his right to return shipment of his HHG might be impacted if he did not ship the goods upon retirement, or that there were extension protocols to be followed with regard to delaying the shipment of HHG. He states he was advised by a named individual during his out-processing that the Government would move him back to the United States whenever he got ready to move. The individual who is alleged to have made that statement denies having made it and states further that she did not out-process the claimant.

Discussion

Agencies may pay travel and transportation expenses of employees who return from posts of duty overseas to which they were transferred, pursuant to applicable regulations. 5 U.S.C. §§ 5722, 5724(d) (2006). The Federal Travel Regulation, which applies to all federal civilian employees, provides that all travel and transportation of HHG must begin no later than six months after the date of an employee’s separation from government service:

Is there a time limit when I must begin my travel and transportation upon separation?

Yes, all travel and transportation of household goods must begin no later than six months after:

(a) Your date of separation.

41 CFR 302-3.314 (2006). An agency may grant an extension on beginning the

transportation of HHG, not to exceed two years from the employee's effective date of separation:

May I be granted an extension on beginning my separation travel?

Your agency may grant you . . . an extension on beginning your separation travel, not to exceed 2 years from your effective date of separation.

Id. 302-3.315.

The imposition of the two-year time limit on completing travel and transportation at government expense is to ensure both that the travel is clearly incident to the circumstances giving rise to the entitlement and that such travel is undertaken in a reasonable time frame. *See Ernestine Pouncy*, GSBCA 16859-RELO, 06-2 BCA ¶ 33,437; *Patrick R. Gillen*, GSBCA 15748-RELO, 02-2 BCA ¶ 31,869 (citing 28 Comp. Gen. 285 (1948)). Notwithstanding genuine reasons for remaining abroad cited by employees who have separated from the civil service while stationed OCONUS, the two-year limitation has consistently been enforced for return travel and transportation. *Richard J. Waldo*, GSBCA 16235-RELO, 04-1 BCA ¶ 32,465 (2003) (estate and real estate issues delayed departure); *George R. Saulsbury*, GSBCA 16027-RELO, 03-1 BCA ¶ 32,179 (family emergency); *Gillen* (illness requiring continued medical care); *Sherrell M. Garth*, GSBCA 15729-RELO, 02-1 BCA ¶ 31,778 (completion of legal action and desire for children to remain in same school); *Eugene Leong*, GSBCA 13666-RELO (Mar. 31, 1997) (medical and personal reasons).

The Department of Defense's Joint Travel Regulations (JTR) further define the processes to be followed for how travel and transportation benefits must be used upon separation from civil service:

C. Separation Travel and Transportation Allowances Loss

....

b. An OCONUS activity commanding officer may authorize a delay for a reasonable period upon receipt of an employee's written request. Ordinarily, a delay of 90 or less calendar days is reasonable. Under unusual extenuating circumstances that, in the opinion of the OCONUS activity commanding officer warrant a longer delay, return travel may be delayed up to 2 years from the separation date.

c. Requests for delays from an employee separating OCONUS to accept private OCONUS employment/retire locally to establish an OCONUS retirement residence must not be approved.

d. If a request for delay is not received by the OCONUS activity commanding officer, or if the employee refuses to accept/use travel and transportation allowances at the expiration of the approved delay period, the employee loses the allowances.

JTR C5085-C.2.

Pursuant to the JTR, a written request for a delay of ninety or less calendar days will be presumed by the commanding officer to be reasonable. To delay longer than that, the employee must provide “unusual extenuating circumstances that, in the opinion of the OCONUS activity commanding officer warrant a longer delay.” The commanding officer can only extend the employee’s right to remain in the OCONUS area for the amount of time it takes the employee to alleviate his/her extenuating circumstances. Under no circumstances can the delay exceed two years.

Claimant failed to request any delays for the shipment of his HHG prior to the six-month period set by the FTR. As claimant neither shipped the HHG in a timely fashion nor obtained an appropriate extension of time in which to ship the HHG, he lost any allowance he may have had for shipment of his HHG. Additionally, claimant upon separating from government service accepted private OCONUS employment and resided OCONUS; under the JTR, this constituted another reason for the loss of the allowance. The agency has no authority to pay for the transportation of claimant’s HHG under the facts presented here.

While the agency denies that it gave claimant erroneous advice concerning his move, even if it had in fact given erroneous advice, this would not entitle him to benefits that are not authorized by statute and regulation. *Jeffrey A. Whittall*, GSBCA 16785-RELO, 06-1 BCA ¶ 33,259; *Bruce Hidaka-Gordon*, GSBCA 16811-RELO, 06-1 BCA ¶ 33,255. Erroneous advice provided by agency employees cannot modify provisions in the travel regulations that determine the amount of Mr. Jung’s entitlement where no independent authority for such reimbursement exists. *Ken S. Stoner*, CBCA 945-TRAV, 08-1 BCA ¶ 33,818; *Joel Williams*, GSBCA 16437-RELO, 04-2 BCA ¶ 32,769; *Masood Badizadegan*, GSBCA 14393-RELO, 98-2 BCA ¶ 29,789.

Decision

The claim is denied.

PATRICIA J. SHERIDAN
Board Judge