



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

February 16, 2010

CBCA 1619-TRAV

In the Matter of SUSAN M. SPILLMAN

Susan M. Spillman, Lafayette, LA, Claimant.

Jodi Cramer, Office of Chief Counsel, Federal Emergency Management Agency, Department of Homeland Security, Washington, DC, appearing for Department of Homeland Security.

GOODMAN, Board Judge.

Claimant is an employee of the Federal Emergency Management Agency (FEMA). She has requested that this Board review the agency's denial of a claim which she alleges arises from temporary duty (TDY) travel.

Factual Background

In April 2007, claimant, while serving as a CORE (Cadre of On-Call Employees) employee at the agency's Baton Rouge Area Field Office, was asked to serve as Area Manager of the agency's Alexandria, Louisiana, Recertification Office for that office's remaining duration of operation, expected to be about one year. Claimant was told by the agency that she was not entitled to and would not receive reimbursement for travel expenses from her residence in Lafayette, Louisiana, to Alexandria. There were no written travel orders issued with regard to the assignment, nor are there written records documenting that claimant was told that she would not receive travel reimbursement. However, claimant states, "While I inquired several times on the entitlements I am eligible to receive, I was consistently informed that I would not receive travel reimbursements."

Claimant reported for duty on April 16, 2007, in Alexandria. She commuted daily by her private vehicle from her residence to Alexandria and back for the duration of her employment there. She returned to employment in Baton Rouge on April 12, 2008.

Claimant asserts that for the entire duration of her employment in Alexandria, her permanent duty station (PDS) remained Baton Rouge and Alexandria was her TDY station to which she traveled daily. from her residence. To support her claim, she notes that during her employment in Alexandria, her Standard Form (SF) 50 indicated that her PDS was Baton Rouge. She has submitted Forms SF 50 dated January 7, 2007; June 10, 2007; January 6, 2008; and June 6, 2008, all indicating in Box 39 - Duty Station, "Baton Rouge, East Baton Rouge La." ¹ She claims further that her work day, including her round trip from her residence to her TDY station in Alexandria, was twelve hours or more per day, which would entitle her to receive 75% per diem per day. Additionally, she states that "since the amount of time I had to drive when reporting to the [TDY] station was an additional one hour each day, as compared to my drive from abode to my permanent duty station [Baton Rouge], I should have included the additional hour on my time sheets for each day I reported to work in Alexandria."

Claimant submitted a travel voucher to the agency for \$24,192 for reimbursement of mileage (255 days x 195 miles/day x \$.485); \$4387.50 for reimbursement of 75% per diem allowance (150 days x \$29.25); and \$8904.02 for overtime back pay. The agency denied reimbursement of these amounts on the basis that claimant was not on TDY while working in Alexandria. It is the agency's position that claimant was told that she would not receive reimbursement for travel expenses from her residence to Alexandria and that claimant's permanent duty station (PDS) had been changed to Alexandria for the duration of her employment there. The agency admits that claimant's SF 50 did not indicate that her PDS has been changed, but maintains that this documentation is not conclusive. Rather, the agency relies on the fact that on April 15, 2007, a Duty Tour Information Edit Form was issued, which the agency states was routinely used in lieu of the SF 50 to officially change employees' PDS designations, and which changed claimant's PDS from Baton Rouge to Alexandria. This personnel action was approved on July 20, 2007. The agency has submitted an employee affidavit stating that at the time the action was taken, the FEMA Long Term Recovery Office in Baton Rouge did not issue a SF 52² to change the duty

¹ Claimant cites the Office of Personnel Management (OPM) Guide to Processing Personnel Actions, which states that "[t]he Standard Form 50 is the required form of employee notifications for accessions, conversions, and separations."

² The SF 52 is the request for personnel action that precedes the change in the SF 50.

stations of its employees. Thus, the only paperwork issued to change claimant's duty station was the Duty Tour Information Edit Form.

The agency states further:

Absent a specific authorization to the contrary, human capital personnel specialists were required to ensure compliance with the "Duration of Temporary Duty Assignments" policy of the agency (Under Secretary's Policy No. 1-05; . . .), and to change claimant's official duty station from Baton Rouge to Alexandria. The policy states that an employee may not be assigned to a single temporary work location for greater than fifty consecutive weeks. The policy also requires the Agency to issue a Temporary Change of Station if an employee is to be assigned to a location for a time period of six to 30 months.

After claimant returned to work in Baton Rouge, another Duty Tour Information Edit Form was issued by the agency indicating claimant's PDS was changed back to Baton Rouge. Claimant asserts that she never saw the two forms which allegedly changed her PDS to Alexandria and then back to Baton Rouge.

In summary, the agency's position is that claimant's official duty station was changed from Baton Rouge to Alexandria for the period April 16, 2007, through April 12, 2008. Her PDS was changed to Baton Rouge when the Alexandria office was closed in April 2008. Since a federal employee is responsible for the costs of commuting between her residence and official duty station, she was responsible for paying the costs of her commute from her residence to her PDS in Alexandria.

Discussion

The question presented here is whether claimant's assignment to Alexandria constituted a temporary or permanent relocation of her PDS. An agency has discretion to determine how to treat an assignment, i.e., a permanent change of duty station or a temporary duty assignment. This Board cannot reverse the agency's determination unless it finds that the agency has abused its discretion. Whether assignment to a particular station is temporary or permanent is a question of fact to be determined from the orders directing the assignment, the duration of the assignment, and the nature of the duties performed. *Frank A. Conforti*, CBCA 828-TRAV, 07-2 BCA ¶ 33,693; *Rodney C. Lowe*, GSBGA 13850-RELO, 97-1 BCA ¶ 28,962.

Apparently there were no written orders assigning claimant to the Alexandria office. We therefore determine from the surrounding circumstances whether her transfer was a relocation of her official station. First, there is no dispute that claimant was advised that she would not receive reimbursement of travel expenses for her travel to Alexandria. Thus, there is no allegation that she was ever told, verbally or in writing, that she would be reimbursed for her travel. *See, e.g., Lowe.*

The duration of the assignment, i.e., one year, supports the agency's determination that the assignment was permanent rather than temporary. In fact, the agency had a stated policy that assignments of that duration would be permanent, not temporary, duty. That claimant was expected to spend the entire duration of the assignment in Alexandria also supports the agency's determination that the assignment was permanent and not temporary. With regard to the nature of the duties performed, claimant served as Area Manager of the Alexandria office, a supervisory position, a further indication of a permanent assignment. *See, e.g., Lowe.*

Another factor to consider is the location where an employee expects, and is expected, to spend the greater part of his or her time. *James D. Fenwood*, GSBCA 15104-RELO, 00-1 BCA ¶ 30,658 (1999). It is clear that both claimant and the agency expected claimant to spend her entire time working in the Alexandria office for the duration of the assignment.

The agency's records are not conclusive proof of an employee's permanent duty station. *Conforti; Fenwood*. While claimant's SF 50s issued during her employment in Alexandria indicated that her PDS remained Baton Rouge, the agency explains that it had employed an alternate form to indicate change of PDS when claimant was assigned to Alexandria and thereafter reassigned to Baton Rouge. Copies of these forms have been submitted to the Board. While the OPM Guide to Personnel Actions cited by claimant may require the agency to indicate change of PDS on the employee's SF 50, failure to do so does not negate the agency's intent to deem her assignment a change in PDS, as evidenced by the alternate form used.

Given all of these factors discussed above, the agency has reasonably treated claimant's assignment to Alexandria as a change of PDS rather than a TDY. There is no basis for this Board to find that the agency has abused its discretion in treating the assignment as such.

It is well settled that an employee who is engaged in commuting between his or her residence and official duty station is performing personal business, not official business for the Government, and the employing agency will not pay the transportation costs that the

employee incurs while commuting. *Conforti; Freddie G. Fenton*, GSBCA 13638-TRAV, 97-1 BCA ¶ 28,712 (1996). Because the expenses claimed by claimant constitute commuting costs between her home and her official station, the agency properly denied the claim.

By law, claims involving federal civilian employees' compensation (including overtime) and leave are reviewed by the Director of OPM. 31 U.S.C. § 3702 (2006). Accordingly, the claim for overtime compensation is within the jurisdiction of the Director of OPM rather than the Administrator of General Services. *Hank Thompson*, GSBCA 15510-RELO, 01-1 BCA ¶ 31,370; *William H. Goggins*, GSBCA 14469-RELO, 98-2 BCA ¶ 29,842; *Darrell R. Ratliff*, GSBCA 14403-TRAV, 98-2 BCA ¶ 29,760.

Decision

Claimant's claims for mileage and per diem are denied. Claimant's claims for overtime compensation are dismissed for lack of jurisdiction.

ALLAN H. GOODMAN
Board Judge