



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

October 25, 2011

CBCA 2425-TRAV

In the Matter of LORI L. ROGERS

Lori L. Rogers, West Jordan, UT, Claimant.

Colonel David M. Witty, Deputy Chief, Office of Military Cooperation – Egypt, Cairo, Egypt, appearing for Department of Defense.

DANIELS, Board Judge (Chairman).

As January 2011 moved toward its conclusion, the situation in Cairo, Egypt became chaotic. Protesters filled the streets. Shots were fired. Danger was omnipresent. The fate of the country and its citizens was uncertain.

The Office of Military Cooperation – Egypt (OMC) ordered one of its employees, Lori L. Rogers, to evacuate the country. The Government put Ms. Rogers and her six-year-old granddaughter on a flight to Istanbul, Turkey. Ms. Rogers and her granddaughter stayed at a hotel in Istanbul until they were able to secure passage on a flight to Amsterdam, The Netherlands. In Amsterdam, they joined her husband, an employee of General Dynamics Corporation in Cairo, who had been evacuated from Egypt by his company the day after Ms. Rogers had been directed to leave.

The question in this case is, Who should pay for the costs of Ms. Rogers' travel (and that of her granddaughter) from Cairo to Amsterdam? To this point, the Government has paid for the cost of the flight from Cairo to Istanbul, and she has paid for lodging in Istanbul and the flight from Istanbul to Amsterdam. OMC has told her that she will not be reimbursed for the costs she has incurred and will be billed for the cost of the flight for which the Government has paid. Ms. Rogers asks the Board to direct the Government to absorb all of the costs at issue.

The rules applicable to this matter are contained in the Department of State Standardized Regulations (DSSR).¹ Sections 600 to 645 of the DSSR govern payments to federal civilian employees who are evacuated under authorized orders from foreign posts of duty. DSSR 612.2. These sections provide in extensive detail for travel expense reimbursement and allowances for “civilian employees of the United States Government who are United States citizens . . . ,” and the dependents of those employees, DSSR 612.1, 630-39, but they contain an express exception: The regulations “do not apply to . . . locally hired American citizens who work for the U.S. Government but who do not have an agreement for return transportation to the United States at Government expense.” DSSR 612.3.

Ms. Rogers was a locally hired American citizen who worked for the Government but did not have an agreement for return transportation the United States at Government expense. Therefore, according to the applicable rules, OMC had no authority to pay for the cost of her travel. The claim must be denied.

OMC is apologetic about the predicament in which Ms. Rogers finds herself. The agency gave her verbal and written orders to leave Egypt. Indeed, the agency refused her request to remain in the country until her husband’s employer made a decision as to evacuation of its employees. (Had she been allowed to stay, on the day after her forced removal, she would have been evacuated with other General Dynamics employees and their dependents, and that company would have paid for her flight from Cairo to Amsterdam.) An OMC official who was assigned to help Ms. Rogers writes, “Agents for the US Government, operating in their official capacity, caused Ms. Rogers to incur expenses. These expenses need to be reimbursed.” OMC’s representative in this case acknowledges that the costs in dispute “would not have been incurred but for the erroneous order to leave on the part of the Agency.” In the heat of the moment, OMC officials were properly focused on the safety of

¹ Under statute, “[t]he Secretary of Defense may pay travel expenses and related expenses [of civilian employees and members of their families] for purposes and in amounts that are comparable to the purposes for which, and the amounts in which, travel and related expenses are paid by the Secretary of State under section 901 of the Foreign Service Act of 1980 (22 U.S.C. 4081).” 10 U.S.C. § 1599b(b) (2006). Section 901 of the Foreign Service Act authorizes the Secretary of State to “pay the travel and related expenses of members of the [Foreign] Service and their families, including costs or expenses incurred for” any of several purposes, including “removal of the family members of a member of the Service . . . from a Foreign Service post where there is imminent danger because of the prevalence of disturbed conditions.” 22 U.S.C. § 4081(7). The Secretary of State has prescribed rules, in the DSSR, for payments during an ordered departure.

their employees; they did not realize that the DSSR precluded payment for the travel expenses of this particular individual and her dependent.

In our view, the law commands an excessively harsh result in this case. In a hazardous situation, the agency's paramount concern for the well-being of its employees was commendable and its lack of attention to regulations was understandable. OMC's orders were directly responsible for Ms. Rogers' having had to incur some travel expenses and being liable for others. Ms. Rogers was not a highly-paid employee, and the costs are likely to be a financial burden for her. We believe that her claim is worthy of consideration by the Administrator of General Services under the Meritorious Claims Act, 31 U.S.C. § 3702(d). This statute authorizes the Administrator to recommend that Congress take action for legal or equitable reasons to make an employee whole on a claim that may not be paid by using an existing appropriation. We refer the case to the Administrator for her review.

STEPHEN M. DANIELS
Board Judge