UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

June 25, 2013

CBCA 3066-RELO

In the Matter of ANTONIO K. HUBBARD

Antonio K. Hubbard, Quantico, VA, Claimant.

James E. Hicks, Office of Chief Counsel, Drug Enforcement Administration, Department of Justice, Springfield, VA, appearing for Department of Justice.

DANIELS, Board Judge (Chairman).

The Department of Justice's Drug Enforcement Administration (DEA) has demanded that one of its employees, Antonio K. Hubbard, repay $33,000 in education allowance that the agency provided for the education of the employee's sons. Mr. Hubbard asks us to review and reverse this determination. We conclude that we have no authority to do so.

Background

From July 2007 to November 2011, Mr. Hubbard was stationed in Cartagena, Colombia. Because the available local high school in Cartagena was considered inadequate, the agency provided an education allowance for his sons to attend a boarding school in the United States. At the beginning of the 2011-12 school year, DEA paid the boys' tuition, room, and board for the entire year.

On September 1, 2011, Mr. Hubbard was selected for a transfer to a position in Quantico, Virginia. On September 15, he was issued a travel authorization which showed his reporting date to Quantico as December 4. Mr. Hubbard actually left Cartagena much earlier than December 4. He was on temporary duty in Afghanistan from September to December, returning to Colombia briefly for out-processing in November. He and his wife left Cartagena for the last time on November 18. She visited relatives while he was in

Afghanistan. On December 21, after he had completed his assignment there, he and his wife moved to temporary quarters in Virginia.

On June 7, 2012, DEA sent a letter to Mr. Hubbard asserting that the agency's payment of the tuition and associated expenses for the spring semester was in error and demanding that the employee repay the entire amount for that period, $33,000. According to DEA, Mr. Hubbard's education allowance expired on November 18, 2011, the day he left his foreign duty station. In explaining its position to the Board, DEA tells us that payment of such an allowance for employees stationed abroad is subject to the Department of State Standardized Regulations (DSSR). The DSSR provides that "[a] grant [of an education allowance] normally will terminate at the end of the school year, or fraction thereof, upon which the grant is based." DSSR 274.21. Further, when a grant is not terminated in this way, it will be terminated as of the date in one of five listed categories; the relevant category here is "the date the employee transfers or is separated." DSSR 274.22. If the grant is terminated on one of these listed dates, and "the authorizing officer determines that revision of the grant is necessary . . . , the recomputed grant should provide for recovery of payment or increased payment when applicable." *Id.*

Mr. Hubbard objects to this reasoning on both practical and legal grounds. He notes that while in Cartagena, he was responsible for coordinating the admissions of all DEA families reporting there with school-age dependents. He assisted the families with admissions to various schools, he says, and although at least ten employees left during the school year, the agency never requested reimbursement from any of them. Thus, he had no reason to believe that he would have to pay for the last semester of his sons' 2011-12 school year education, even after he was transferred to Virginia. Additionally, the agency did not give him definitive notice that it expected repayment of the allowance until after that last semester had concluded.

Mr. Hubbard also points to a section of the DSSR not cited by the agency, which states:

> Where the employee, assigned to a post in a foreign area, receives official notice of transfer to a new post in a non-foreign area while the child is attending school and remains in the same school while the employee transfers, the head of agency may waive recovery of all or portions of the education allowance advanced if satisfied that such recovery would be against equity and good conscience or against the public interest.

DSSR 276.52. This section further states, "Evidence weighing against recovery and meriting exercise of the waiver includes circumstances where . . . the child's educational progress

would be affected by the withdrawal of the child from the school before the end of the school year." *Id.* Mr. Hubbard maintains that DEA should waive recovery, even if recovery is permissible, because the semester for which recovery is sought was his older son's last semester of high school.

Discussion

While both sides present their positions in an articulate way, they have neglected to consider a fundamental aspect of the case: whether this Board may hear it. Our authority to settle claims is limited by statute to "claims involving expenses incurred by Federal civilian employees for official travel and transportation, and for relocation expenses incident to transfers of official station." 31 U.S.C. § 3702(a)(3) (2006). The authority to settle other claims is vested elsewhere; for example, the Office of Personnel Management "shall settle claims involving Federal civilian employees' compensation and leave." *Id.* § 3702(a)(2).

The education allowance at issue here is provided pursuant to statute, 5 U.S.C. § 5924. This law states:

> The following cost-of-living allowances may be granted, when applicable, to an employee in a foreign area:
>
> . . . .
>
> (4) An education allowance or payment of travel costs to assist an employee with the extraordinary and necessary expenses, not otherwise compensated for, incurred because of his service in a foreign area or foreign areas in providing adequate education for his dependents.

The statute separates the "education allowance or payment of travel costs" into two portions. The first is an allowance for tuition and, where necessary, room and board. The second is travel and transportation expenses associated with the education. *Id.* § 5924(4)(A), (B).

One of our predecessors in considering claims by federal employees, the General Accounting Office (now known as the Government Accountability Office), held that although both parts of the education allowance are contained in a statute which labels them "cost-of-living allowances," the allowance for tuition, room, and board is a true allowance, but the provision for payment of associated travel and transportation expenses is not. *Educational Travel Expenses*, B-209292 (Feb. 1, 1983); B-202346, et al. (Sept. 28, 1981). Another of our predecessors, the General Services Board of Contract Appeals, accepted the distinction. That board concluded that it had –

> the authority to settle claims for educational travel. Although the payment for educational travel is authorized in chapter 59 of title 5, which provides for the payment of allowances, a claim for educational travel involves expenses incurred by an employee for official travel and transportation of the employee's dependents. As such, the claim falls within our authority to settle.

Frederic S. Newman, Jr., GSBCA 15873-TRAV, 02-2 BCA ¶ 31,993. We continue to settle such claims. *E.g.*, *James A. Caughie*, CBCA 2508-RELO, 12-1 BCA ¶ 34,955.

Unlike a claim involving travel expenses, which may be settled here because the costs at issue are alleged to have been "incurred . . . for official travel and transportation," a claim involving an education allowance may not be settled by us because it is a true allowance and thus is "compensation" – a matter reserved for settlement by another entity. *See Roy L. Edgar*, CBCA 1985-RELO, 11-1 BCA ¶ 34,702 (no jurisdiction over claim involving living quarters allowance); *Mary D. Wilson*, CBCA 1510-RELO, 09-2 BCA ¶ 34,184 (same). We consequently transfer this case to the Office of Personnel Management – which *does* have jurisdiction over claims involving compensation – for resolution.

STEPHEN M. DANIELS
Board Judge