



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

July 27, 2007

CBCA 757-TRAV

In the Matter of AMY ANDRESS

Amy Andress, Winona, MN, Claimant.

Mark S. Ledford, Office of General Law, Division of Contracts & Claims, Social Security Administration, Baltimore, MD, appearing for Social Security Administration.

BORWICK, Board Judge.

Ms. Amy Andress, claimant, seeks reimbursement of \$6000 for early lease-termination charges she incurred resulting from the premature termination of her long-term detail. The agency, the Social Security Administration (SSA), denied the claim as it considered reimbursement of the charge unallowable under the Federal Travel Regulation (FTR) as supplemented by the agency's Administrative Instruction Manual System (AIMS). We deny the claim as the agency correctly applied the FTR and the AIMS.

Background

On or about July 17, 2006, the agency assigned claimant to a long-term temporary duty (TDY) detail not to exceed two years from her permanent duty station in Winona, Minnesota, to Baltimore, Maryland.¹ Claimant's detail was to commence on August 7, 2006, and the travel authorization granted claimant living expenses at the full lodging and meals and incidental expenses rate for the first thirty days of claimant's detail and at a reduced rate

¹ The agency might have transferred claimant by means of a temporary change of station, pursuant to 5 U.S.C. § 5737 (2000) and 41 CFR pt. 302-3, subpt. E (2006), but chose not to do so.

thereafter. Claimant's detail was to the agency's Division of Software Implementation (DSI).

Claimant, with the assistance of a relocation specialist, secured a two-year lease at a modern apartment building overlooking the Inner Harbor in the City of Baltimore. The lease contained a provision for assessment of a charge for early lease-termination.

Claimant started her Baltimore detail in early August of 2006. According to claimant's team leader at the DSI, claimant's performance exceeded expectations. But three weeks into her detail, claimant told the team leader that she was homesick and wanted to return to Minnesota. The team leader told claimant that her job performance was excellent and urged claimant to give the detail and the move to Baltimore a chance. The team leader referred claimant to other detailees staying in her area so that claimant could develop a social network outside work.

When the team leader later discussed with claimant the issue of the charge for early lease-termination, she repeatedly told claimant that the agency would reimburse an employee for such a charge if and only if the termination of the employee's detail was initiated by the agency. If an employee decided to terminate a detail early, an employee would not be reimbursed for the payment of that charge.

The division director believed that claimant was meeting performance expectations; she had received positive comments about claimant from claimant's immediate supervisor. However, the division director had also been warned by the team leader about claimant's unhappiness in the detail and that claimant had decided to leave. The division director notified her area director of these circumstances.

During the last week of August 2006, claimant met with the division director of the DSI. According to the division director, claimant repeatedly told the division director that she wanted to go home. The division director states that she asked claimant a series of probing questions to determine whether there was a specific reason for claimant's unhappiness in her detail, but that claimant simply repeated that she wanted to go home. The division director told claimant that it would take some time to find a replacement for her and that claimant could not leave until the DSI had found a replacement. Therefore, the division director could not then give claimant a date when she could return home.

The division director also states that claimant did not at the August meeting raise the issue of the early lease-termination charge, but that in early September she provided claimant the same advice that the team leader had provided concerning reimbursement of that charge.

On August 28, 2006, claimant's relocation specialist advised claimant that the early lease-termination charge would be \$7990.

On or about September 6, 2006, the DSI found a temporary replacement for claimant, and in an e-mail message, the division director stated that claimant would return to her home office on September 19, with the travel day scheduled for September 18.

The claimant sent an e-mail message to her relocation specialist on September 8, 2006, concerning the early lease-termination charge, stating in pertinent part:

Hindsight is always 20/20, but I seriously thought I would be in Baltimore for at least a year. I did not expect to be leaving so quickly; I ended up in a position that was over my head and I also became very home sick [sic] for family and friends back in the Midwest. Again I understand that that is my own fault. . . .

That same day claimant sent an e-mail message to her team leader stating:

On Tuesday, there is a meeting for new detailees to meet with Linda M. This was sent to me before I had made the decision to return to my home office, so therefore I am assuming it would not be appropriate for me to attend.

By letter of September 14, 2006, claimant's team leader provided a letter of recommendation stating that claimant quickly learned the software development process, and was excellent at preparing executive correspondence, training materials, and Power Point presentations. The team leader stated that "we would welcome [claimant] back for a long-term detail" and that "I would recommend her for other developmental opportunities in the agency."

On September 28, 2006, claimant submitted an electronic voucher to the agency for reimbursement of the \$7990 early lease-termination charge. Claimant's reimbursement request was denied since the agency concluded that claimant had voluntarily returned to her permanent duty station. On October 12, 2006, claimant's relocation specialist advised that the apartment complex had been able to rent her vacated apartment and that the early termination charge had been reduced to \$6245. On October 13, 2006, claimant sent a certified check for \$6000 to the relocation specialist. The relocation specialist considered that full payment. By subsequent voucher of January 26, 2007, claimant sought reimbursement of \$6000. Claimant maintained that the "detail ended early at the request of SSA." The agency again denied reimbursement because it considered that the detail had ended at claimant's request.

In her submission to the Board, claimant presents her version of the conversations she had with her supervisors. Claimant states that three weeks after her detail had begun, she met with the division director and “thoroughly explained” how she felt about the detail.² Claimant states that in reply the division director said that “she had already interpreted [claimant’s] feelings about the detail” and had come to the conclusion that the detail was not right for claimant’s skills and experience. Claimant states that the division director told claimant that she had already spoken to claimant’s area director in Minnesota and advised the area director that claimant would be returning to agency offices in Minnesota. Claimant maintains that the division director assured claimant that the early lease-termination charge would be reimbursed by the agency. The division director denies making such a commitment.

Claimant also states that in a later conversation on or about August 30, the division director called claimant into her office, told claimant to act like a “big girl,” and advised claimant that she would have to pay the early termination charge.³

Claimant states that on August 31, 2006, her team leader asked her to stay in the detail, which came as a “total shock” in light of what she perceives to be the “disrespectful manner” in which she had been treated the previous week by the division director.

Discussion

The FTR provides in its question and answer format:

What reimbursement will I receive if I prepay my lodging expenses and my TDY is curtailed, canceled or interrupted for official purposes or for other reasons beyond my control that are acceptable to my agency?

If you sought to obtain a refund or otherwise took steps to minimize the cost, your agency may reimburse expenses that are not refundable, including a forfeited rental deposit.

41 CFR 301-11.16 (2006). The agency argues that this provision of the FTR is implemented by AIMS § 07.16.05 A.8, which provides:

² Claimant does not otherwise describe the explanation she gave the division director.

³ According to claimant, this conversation occurred immediately after claimant’s conversation with her team leader in which claimant stated she would assume the financial responsibility for a lease-termination charge.

Unrefunded rent and/or forfeited security deposits at the temporary duty station incurred as a result of early curtailment of an assignment, not at the request of or caused by the employee, may be reimbursed as a separate item of expense in addition to allowable subsistence. The employee must have

- Incurred the expense pursuant to cancellation or early termination of travel orders. . . . [The AIMS also lists three other factors not relevant in this matter.]

AIMS § 07.16.05 A.8.

Under the FTR, an employee may recover non-refundable lodging expenses when the employee has prepaid his or her lodging expenses and when the TDY is canceled for official purposes or for reasons beyond the employee's control which are acceptable to the agency. Through the above-quoted section of the AIMS, the agency has determined that a curtailment of the TDY at the request of, or caused by, the employee, is not an official purpose or a reason that is acceptable to the agency. AIMS § 07.16.05 A.8 is a valid implementation of the FTR.

Claimant has the burden of proof and must establish all elements of her claim. *Gary Twedt*, GSBCA 16905-RELO, 06-2 BCA ¶ 33,433; *Gerry M. Hopkins*, GSBCA 14850-TRAV, 99-2 BCA ¶ 30,435.⁴ Claimant has not established that she prepaid her lodging expenses, which is a requirement of 41 CFR 301-11.16. See *Marianne Price*, GSBCA 15482-TRAV, 02-1 BCA ¶ 31,682 (2001).

The parties vigorously argue whether or not the agency caused the curtailment of claimant's TDY in Baltimore. Claimant continually and forcefully expressed to her superiors her unhappiness with her separation from her familiar surroundings of Minnesota. In her e-mail messages to her relocation specialist and her team leader, claimant admits that early termination of her detail in Baltimore was her idea. Agency officials were solicitous of

⁴ On January 6, 2007, pursuant to section 847 of the National Defense Authorization Act for Fiscal Year 2006, Pub. L. No. 109-163, the General Services Board of Contract Appeals (GSBCA) was terminated and its cases, personnel, and other resources were transferred to the newly-established Civilian Board of Contract Appeals (CBCA). The holdings of the GSBCA and other predecessor boards of the CBCA are binding on this Board. *Business Management Research Associates, Inc. v. General Services Administration*, CBCA 464, 07-1 BCA ¶ 33,486.

claimant's well-being in quickly arranging for termination of the detail and her transfer back to agency offices in Minnesota, but it is evident from the totality of the record that claimant initiated the request for early termination of her detail.

Decision

For the reasons stated above, the Board must deny the claim.

ANTHONY S. BORWICK
Board Judge