



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

June 23, 2009

CBCA 1510-RELO

In the Matter of MARY D. WILSON

Mary D. Wilson, APO Area Europe, Claimant.

Brian C. Berry, Assistant General Counsel, Office of the General Counsel, Department of Defense Education Activity, Arlington, VA, appearing for Department of Defense.

GOODMAN, Board Judge.

Claimant, Mary D. Wilson, is a civilian employee of the Department of Defense Education Activity (DoDEA). She seeks this Board's review of the agency's denial of her request for a living quarters allowance (LQA) and other entitlements conditioned upon her entitlement to LQA.

Factual Background

In August 1984, claimant accompanied her spouse, a Department of Defense (DoD) military Air Force employee, to Ramstein Air Base (Ramstein) in Germany. In January 1985, the Department of Defense Dependents Schools - Europe (DoDDS-E) hired claimant as a teacher. In April 1996, claimant's husband retired from the military and began employment as an Air Force civilian employee at Ramstein. He signed a transportation agreement granting him the right to travel and transportation expenses for him and his family. In January 2005, claimant's husband retired as a civilian employee under the Federal Employees Retirement System (FERS). Claimant states that "in order for me to continue my

career as an educator for the [DoDEA] and to avoid living apart as a result of reassignment for my husband to a stateside location, my husband elected to retire.”

According to claimant, in October 2003 before her husband’s retirement from civilian employment, she and her husband sought advice from agency human resources personnel regarding her ability to receive LQA and related benefits when her husband retired. LQA is a payment to an employee to reimburse the expense of living quarters in a foreign country, intended as a recruitment incentive for federal employees living in the United States to accept a position in a foreign country. Because claimant was living in Germany at the time she was hired, she was not entitled to LQA when she was hired. This case involves her claim that as a spouse of a retiring employee remaining in a foreign country, she is entitled to LQA upon her spouse’s retirement based upon various regulations, decisions of the Federal Services Impasse Panel (FSIP), and instructions implementing those decisions.

Claimant states that before her husband retired as a civilian employee she was told by agency human resources personnel that she could receive benefits as outlined in a memorandum of understanding negotiated between the DoDDS and the Federal Education Association (FEA) that interpreted several decisions of the FSIP that set forth a waiver process by which a DoDDS-E employee, who was initially hired locally (in Europe), could receive LQA benefits beginning when a sponsoring spouse retired and receive conditional eligibility for separation travel and shipment of household goods (HHG) when the DoDDS-E employee retired. 92 FSIP 17; 92 FSIP 103; 96 FSIP 45.

After claimant’s husband retired, claimant sent a memorandum to DoDEA requesting a waiver so that she could begin to receive LQA as of her husband’s retirement and entitlement to final return travel and shipment of HHG upon her own retirement. Claimant’s waiver request was denied by the agency on the basis that she was ineligible for a waiver, contrary to the advice claimant received prior to her husband’s retirement. Over the next several years, claimant challenged the agency’s initial decision several times and sought assistance from her congressman.

She requests a determination by this Board as to whether she is entitled to LQA from January 23, 2005, when her husband retired, and return travel and shipment of HHG to the United States upon her retirement.

The agency asserts that the Board lacks jurisdiction to resolve a claim for LQA because LQA is not an expense of travel or relocation and also because the grievance procedures of the collective bargaining agreement between DoDDS and the Overseas Education Association (OEA) provides the exclusive procedure for resolving claimant’s claims. The agency also asserts that, on the merits of the claim, claimant is not entitled to

the benefits she seeks because her husband resigned his civilian position rather than retired. Claimant filed an extensive response to the agency's position on the latter issue but did not address the jurisdictional issues.

Discussion

The agency has requested that the Board dismiss this case on two bases. First, the agency asserts that the claim for LQA is not within the jurisdiction of this Board, but within the jurisdiction of the Office of Personnel Management (OPM). The agency also asserts that the collective bargaining agreement between DoDDS and the OEA requires that the claim be resolved pursuant to the grievance procedures in that agreement rather than by this Board.

The jurisdiction of this Board includes the resolution of claims for reimbursement of expenses incurred while on official temporary duty travel, and claims for reimbursement of expenses incurred in connection with relocation to a new duty station. Rule 401 (48 CFR 6104.401 (2008)); 31 U.S.C. § 3702 (2006). Our predecessor board in deciding those matters consistently recognized that LQA is not an expense of travel, transportation, or relocation; because LQA is an allowance which accrues to an employee after the employee has traveled to a place and relocated there, it is more properly viewed as a species of compensation to be referred to OPM for resolution. *William S. Zeigler*, GSBCA 15922, 03-1 BCA ¶ 32,084 (2002); *Donald E. Guenther*, GSBCA 14032-RELO, 97-1 BCA ¶ 28,795; *accord Wilma F. Sexton*, GSBCA 13790-RELO, 97-1 BCA ¶ 28,855; *Carmon L. Woodley*, GSBCA 13706-RELO, 97-1 BCA ¶ 28,861. Accordingly, claims regarding LQA for civilian employees are not heard by this Board, but by OPM. We therefore must dismiss this case on the basis that we have no jurisdiction to make a determination concerning entitlement to LQA.

Claimant has also requested a determination of entitlement to return travel and shipment of HHG upon her retirement. While our jurisdiction does encompass determination of these issues under most circumstances, we cannot determine these entitlements with regard to claimant. FSIP decision 96 FSIP 45, relied upon by claimant, states that "unit employees who become eligible for LQA transferred to them as the result of the [FSIP] decisions 92 FSIP 17 and 103 will receive conditional eligibility for separation travel and transportation of [HHG] to their homes of record." Thus, in claimant's case, a determination of entitlement to these expenses is dependant upon an initial determination of entitlement to LQA, which must be made by OPM.

Decision

This case is dismissed and transferred to OPM for resolution. We make no determination as to whether claimant's claims are grievances to be resolved by the collective bargaining agreement between DoDDS and the OEA. We leave it to OPM to determine any application of the grievance procedures of that agreement to claimant's claims.

ALLAN H. GOODMAN
Board Judge