



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

August 12, 2009

CBCA 1582-RELO

In the Matter of EVESTER EDD

Evester Edd, Silver Spring, MD, Claimant.

Jeremey Lundergan, Farm Service Agency, Department of Agriculture, Kansas City, MO, appearing for Department of Agriculture.

SOMERS, Board Judge.

Background

On August 12, 2006, Evester Edd resigned a position with the Federal Deposit Insurance Corporation. On September 6, 2006, the Department of Agriculture, Farm Service Agency, tentatively approved his appointment to a position located in the Washington, D.C., metropolitan area, upon successful completion of a background investigation. By letter dated October 3, 2006, the agency confirmed the appointment and established that his official start date for the position would be October 15, 2006.

On October 6, 2006, the agency issued travel orders to Mr. Edd which authorized, among other forms of relocation benefits, temporary quarters subsistence expenses (TQSE), a miscellaneous expense allowance, and real estate transaction expenses. Mr. Edd incurred various expenses related to his move from his home in Roslindale, Massachusetts, to the Washington, D.C., area. The agency reimbursed him for TQSE in the amount of \$1720.61.

On October 27, 2008, Mr. Edd requested an extension of time to submit a relocation voucher for the cost of moving his household goods. By letter dated November 10, 2008, the agency granted him sixty additional days to submit a voucher for moving his household goods.

On March 13, 2009, Mr. Edd submitted a voucher for the storage and shipment of his household goods and for the cost of mileage related to his spouse driving her privately owned vehicle (POV) from Massachusetts to Washington, D.C. The agency denied Mr. Edd's claim for reimbursement on the grounds that his break in service categorizes him as a new hire for the purposes of relocation allowances, which limits his entitlement to certain relocation expenses. Additionally, as to the other expenses for which he would have potentially qualified as a new hire, the claim was denied on the basis that Mr. Edd failed to file his claim within two years from the effective date of his appointment, citing the Federal Travel Regulation (FTR), 41 CFR 301-2.8 (2006). In addition, as a new employee, the agency determined that Mr. Edd was not entitled to TQSE and informed him that he would be required to repay the agency \$1720.61, the amount that he had been erroneously reimbursed.

Mr. Edd has asked this Board to review the agency's actions. Mr. Edd's claim before the Board, however, seeks relief beyond that initially claimed before the agency. In addition to seeking reimbursement for storage and shipment of his household goods, as well as the costs related to his spouse's POV travel from the previous residence to the new residence, Mr. Edd seeks reimbursement for the costs of mailing personal household goods to the new residence, temporary quarters expenses in the amount of \$6435, local tax paid for the temporary quarters, reimbursement of a security deposit for an apartment located in Silver Spring, Maryland, costs incurred for packing materials and related supplies, and other miscellaneous expenses. In addition, Mr. Edd seeks reimbursement of \$51,000 for a loss allegedly incurred due to the diminished value of his Massachusetts home. Mr. Edd believes that he would have sold his home earlier but for the fact that he believed he would be able to take advantage of the relocation services program available to transferring employees. Finally, Mr. Edd asks that the agency waive the \$1720.61 debt for the TQSE.

Discussion

The agency correctly determined that Mr. Edd was a new employee and therefore could not receive TQSE. The kinds of relocation benefits which are paid to individuals who move to new locations to take on assignments from federal agencies are prescribed by statute. Benefits available to new appointees are provided in sections 5722 and 5723 of title 5 of the United States Code (2006). Benefits available to employees who are transferred from one duty station to another in the interest of the Government are provided in sections 5724 and 5724a of title 5.

Under the applicable regulations, new employees are defined as including not only individuals when first appointed to government service, but also individuals appointed after a break in service. An exception to this rule exists for individuals who resume government

service after a break in service attributable to a transfer of function or reduction in force. 41 CFR 3.1(b). There is no indication in the record that this exception would apply to claimant. *See, e.g., Debra Jo Dyer*, GSBCA 15411-RELO, 01-1 BCA ¶ 31,335; *Wendy Castineira*, GSBCA 15092-RELO, 00-1 BCA ¶ 30,740 (1999).

Thus, Mr. Edd, who is properly categorized as a new employee at the time that he assumed his position in Washington, D.C., is entitled only to those benefits authorized for new appointees. Agencies are authorized to reimburse the travel and transportation expenses of a new appointee and his or her immediate family, the transportation and temporary storage expenses of household goods and personal effects, and the cost of shipping a POV from the place of residence at the time of selection to the initial duty station. 5 U.S.C. § 5723. The FTR similarly provides for the payment of these expenses and makes clear that other expenses, such as subsistence while occupying temporary quarters, residence sale and purchase expenses, and miscellaneous expenses, may not be reimbursed for new appointees. 41 CFR 302-3.2. These regulations have the force and effect of law. Although it is unfortunate that Mr. Edd's travel orders erroneously authorized reimbursement for various expenses to which he is not entitled, the orders do not create a right to reimbursement. It is well established that travel orders which erroneously authorize relocation expenses to which a new employees is not entitled cannot create a right for reimbursement in excess of statutory and regulatory entitlements. *Richard G. Bebout*, CBCA 987-RELO, 08-1 BCA ¶ 33,814; *Andrew J. Marks*, CBCA 672-RELO, 07-2 BCA ¶ 33,602; *Kevin R. Kimiak*, GSBCA 16641-RELO, 05-2 BCA ¶ 33,007. This is true regardless of whether the employee relied to his or her detriment on the erroneous orders. *Bebout; Kimiak; Marlene Lewis*, GSBCA 15431-RELO, 01-2 BCA ¶ 31,642.

To the extent that Mr. Edd's claim includes items to which, as a new employee, he could properly seek reimbursement, such as expenses related to his spouse's POV travel from the previous residence to the new residence; storage of household goods; shipment of household goods by mail¹; and packing materials, Mr. Edd failed to file his claim within the regulatory time limits. Under the regulations, Mr. Edd should have submitted his claim within two years from the effective date of his appointment. 41 CFR 302-2.8. As noted previously, Mr. Edd started working with the agency effective October 15, 2006. He did not

¹ The agency disputes Mr. Edd's claim for reimbursement for the costs incurred for mailing these goods on the grounds that his travel orders did not authorize a separate shipment of household goods. These goods should have been included with the remainder of claimant's household goods and shipped under a bill of lading. In any event, as with his other claims, even if he had been entitled to reimbursement, Mr. Edd failed to file his claim within the time limits set by regulation.

submit his voucher for this expense until March 13, 2009.² Accordingly, the agency properly denied his claim.

As to the other items submitted in his claim before the Board, although it is clear that Mr. Edd would not be entitled to be reimbursed for such things as the loss of value in real estate due to a delayed sale of his previous residence, or for the additional amounts sought for TQSE, Mr. Edd never submitted those claims to the agency. Therefore, these claims are not properly considered as part of this appeal.

The claim is denied.

JERI KAYLENE SOMERS
Board Judge

² Even with the sixty-day extension granted by the agency for the submission of his claim for storage of household goods, Mr. Edd's claim should have been submitted no later than sixty days from November 10, 2008. Mr. Edd filed his claim after that date.