



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

July 21, 2009

CBCA 1533-RELO

In the Matter of ROMEO AYALIN III

Romeo Ayalin III, FPO, AP, Claimant.

Lt. Stefanie M. Wheelbarger, U.S. Naval Hospital, Department of the Navy, FPO, AP, appearing for Department of the Navy.

WALTERS, Board Judge.

Background

The claimant, Romeo Ayalin III, was a special education teacher for the Avondale School District in Avondale, Arizona. His residence was in Surprise, Arizona. In early 2008, he accepted a civilian employee position with the Navy Department as an Early Childhood Special Educator at the U.S. Naval Hospital in Okinawa, Japan. Under travel orders issued by the Navy on January 18, 2008, Mr. Ayalin was authorized travel and transportation costs for himself, his wife, and his daughter between Surprise, Arizona, and Okinawa, Japan. The orders were silent as to transportation or storage of Mr. Ayalin's personally owned vehicle (POV). The orders directed Mr. Ayalin to report to the Government Transportation Officer (GTO) prior to performing any travel and warned that "[t]he traveler will not be reimbursed for individually procured transportation unless previously authorized by the local Transportation Officer."

In this case, the local GTO was the Transportation and Management Office (TMO) at Luke Air Force Base (AFB), Arizona. Mr. Ayalin states that, during an appointment in February 2008, a representative of the Luke AFB TMO advised him that he was entitled to store his POV in a government storage facility – either at the Los Angeles Vehicle Processing Center (LAVPC) or at a government storage facility in San Diego, CA – while

he was on overseas assignment in Japan. This advice was confirmed in writing to him by memorandum dated February 5, 2008, from the Traffic Management Officer at Luke AFB. Relying upon this advice, on March 4, 2008, Mr. Ayalin drove his POV from Surprise, Arizona, to the LAVPC (in Carson, California), where the vehicle was accepted and put into storage, and returned to Surprise by air the same date. He departed Arizona for Okinawa with his wife and daughter on March 5, 2008.

Mr. Ayalin relates that he received an e-mail message from the LAVPC in July 2008, notifying him that his POV had been “processed into the storage facility in error.” Mr. Ayalin further states that he then contacted the Luke AFB TMO, which advised that it had given him “erroneous information” as to his “POV storage rights” and that, notwithstanding that the error had been that of the Government GTO, Mr. Ayalin would still be responsible for the incurred storage fees and for any transport fees to move the POV from the LAVPC back to Surprise, Arizona. Mr. Ayalin has presented receipts from the LAVPC for \$345 (covering the months of September through November 2008¹) and from a private shipping company, Anytime, Inc., in the amount of \$398, for the costs of transporting the POV from the LAVPC to Surprise in November 2008. Mr. Ayalin had sought reimbursement for these costs from the Navy, but was denied reimbursement by the Commander, Naval Hospital, Okinawa, by letter dated “18 Feb 08.”² That letter, referencing the Joint Travel Regulations (JTR), Appendix A1, Part 1, Definitions, advised Mr. Ayalin as follows:

According to the JTR you are not authorized reimbursement for your POV while in storage. It will be your responsibility for any expenses incurred for your POV while it was in storage.

In his claim letter to the Board, Mr. Ayalin inquires as to whether or not the denied costs might be reimbursed. In its response to the claim, the Navy, by letter dated April 13, 2009, referencing the JTR as well as its earlier denial letter, asserts:

[C]ivilian employees are not entitled to store vehicles as part of household goods at government expense. Incorrect information provided by Luke, Air Force Base, Traffic Management Office (TMO) personnel does not confer statutory or regulatory authority to establish such an entitlement.

¹ No documentation was presented for the period March 4, 2008, through August 31, 2008. It may be that Mr. Ayalin was not charged for that period.

²The Board presumes that this letter was actually sent to Mr. Ayalin in February 2009.

The Navy then disclaims all responsibility for Mr. Ayalin's claim, declaring itself "not a party to this complaint" and fingering the Air Force as the culprit in this matter. The Navy goes so far as to suggest: "Mr. Ayalin should seek reimbursement from the activity that provided him with erroneous entitlement information [T]he responsible party is Luke Air Force Base, Traffic Management Office."

In this latter regard, the Board sought input from the Luke AFB TMO and received the following response from the Chief, Personal Property and Passenger, at that office in a letter dated June 4, 2009:

I have reviewed the documents you [the Board] faxed me. I am sorry that this happened. Mr. Ayalin was incorrectly counseled by this office regarding the entitlement to store his POV. The Joint Travel Regulation [sic] (JTR) does not provide for storage of a POV for a civilian employee.

Discussion

In a case decided in 1999 by the General Services Administration Board of Contract Appeals (GSBCA), our predecessor board that had cognizance over travel and relocation claims, the claimant, a civilian employee of the Department of Defense, was given not only one, but two pieces of incorrect information by the Air Force TMO at Fairchild AFB. *Kelvin R. Martin*, GSBCA 14879-RELO, 99-2 BCA ¶ 30,422. First, he was told incorrectly that he could ship his POV to his new permanent duty station, which was also, coincidentally, Okinawa, Japan. Relying on that advice, the claimant then drove his POV some 300 miles to the vehicle port facility at Auburn, Washington, only to be told that the POV was not eligible for shipment. Upon the claimant's return to the TMO, the Board related:

[Mr. Martin] received an apology and, unfortunately, more incorrect advice. This time he was told that, if he made arrangements for storage of the vehicle, the Government would pay for the cost of storage. He was given a signed memorandum for officials in Okinawa explaining that Mr. Martin was entitled to storage of his POV at Government expense. The memorandum cited as authority Section U5800 of Volume I of the Joint Travel Regulations (JTR).

Acting on the advice of the TMO, claimant arranged for local storage of his vehicle. On arrival at Okinawa, he submitted a claim for \$1080, the cost of storing his POV near Fairchild [his point of origin]. The claim was rejected on the ground that there is no regulatory provision authorizing reimbursement of civilian DOD employees for the cost of storing their POVs when on

overseas assignment. The JTR provision relied on by the TMO at Fairchild, upon closer scrutiny, was found to apply to uniformed personnel only.

Martin, 99-2 BCA at 150,382. The Board there acknowledged the unfairness of the claimant having “to pay for the incompetence of the TMO officials” but, nevertheless, held that he could not receive reimbursement for the POV storage costs, absent a basis in statute or regulation authorizing such reimbursement:

[I]t is well established that erroneous advice provided by Government officials cannot, in and of itself, provide a basis for reimbursement where no independent authority for such reimbursement exists. *E.g.*, *Kenneth J. Shaw*, GSBCA 14876-RELO[, 99-2 BCA ¶ 30,426]; *Masood Badizadegan*, GSBCA 14393-RELO, 98-2 BCA ¶ 29,789; *Kevin S. Foster*, GSBCA 13639-RELO, 97-1 BCA ¶ 28,688 (1996).

Id.

This Board, which adopts GSBCA decisions as binding precedent in travel and relocation matters, *Michael C. Biggs*, CBCA 928-TRAV, 2008 WL 1847279 (Apr. 23, 2008), recently was confronted with a situation involving a civilian employee of the Department of Defense Education Activity who had been given incorrect advice relating to the shipment of her household goods back to the United States from Germany, where she had been on assignment. The Board found that the Government could not cover certain excess costs, notwithstanding that advice, and that the employee owed her agency for those costs. *Julie N. Lindke*, CBCA 1500-RELO (May 1, 2009). In *Lindke*, the Board observed:

Allowing an agency to make a payment for a purpose not authorized by statute or regulation would violate the Appropriations Clause of the Constitution. U.S. Const. art. I, § 9, cl. 7 (“No money shall be drawn from the Treasury, but in consequence of Appropriations made by Law.”) The Supreme Court consequently has made clear that an executive branch employee’s promise that the Government will make an “extrastatutory” payment is not binding. Where relevant statute and regulations do not provide for payment for a particular purpose, an agency may not make such payment. *Bruce Hidaka-Gordon*, GSBCA 16811-RELO, 06-1 BCA ¶ 33,255; *Alexander S. Button*, GSBCA 16138-RELO, 04-1 BCA ¶ 32,452 (2003); *Teresa M. Erickson*, GSBCA 15210-RELO, 00-1 BCA ¶ 30,900 (all citing *Office of Personnel Management v. Richmond*, 496 U.S. 414 (1990); *Federal Crop Insurance Corp. v. Merrill*, 332 U.S. 380 (1947)).

The Board is “charged only with interpreting and applying the pertinent regulations; if a particular expense is simply not authorized by law, the Board has no more authority than the agency to permit its reimbursement.” *Biggs*, 2008 WL 1847279 at 3.

Whereas the Joint Federal Travel Regulations (JFTR), applicable to military service members, may authorize POV storage where POV transportation to a foreign permanent duty station is not authorized, *see* JFTR U5462-79, no similar authority for POV storage expense reimbursement exists under the JTR, which applies to civilian employees of military departments. *See* JTR 5200-48. Thus, in the present case, it is clear that there is no authority to reimburse Mr. Ayalin for the \$398 paid to Anytime, Inc., for having that private company retrieve Mr. Ayalin’s POV from the LAVPC and return it to Arizona. That portion of Mr. Ayalin’s claim must be denied.

By the same token, however, unlike the situation in *Martin*, where the POV was stored in a private facility, the vehicle in the instant case was stored in a government storage facility, the LAVPC. Here, in terms of storage fees, Mr. Ayalin is not seeking reimbursement of expenses paid to an outside private party, but the refund of the \$345 in fees assessed by and paid to the Government itself. The JTR does not address whether and under what circumstances the Government is entitled to charge fees to civilian employees of a military department for POV storage in a government-owned facility. In light of the Government’s admittedly erroneous advice, and the fact that Mr. Ayalin would never have placed his POV in storage at the LAVPC in the first place but for that advice, the Government here may wish to refund the fees Mr. Ayalin paid to the LAVPC.

RICHARD C. WALTERS
Board Judge