



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

June 15, 2011

CBCA 2214-RELO

In the Matter of THOMAS A. GILBERT

Thomas A. Gilbert, FPO Area Pacific, Claimant.

Jeffrey A. Canup, Assistant Counsel, Fleet and Industrial Supply Center, Department of the Navy, Yokosuka, Japan, appearing for Department of the Navy.

KULLBERG, Board Judge.

Claimant, Thomas A. Gilbert, a newly appointed employee assigned to the Fleet Industrial Supply Center (FISC) detachment in Guam, seeks reimbursement for subsistence and miscellaneous expenses that he incurred after arriving at his permanent duty station (PDS). His claim is in the amount of \$4820.15. For the reasons stated below, the Board denies the claim.

Background

By orders dated October 9, 2008, Mr. Gilbert, a newly appointed federal employee (supply specialist), was assigned to the FISC detachment in Guam.¹ The block on his orders that was titled "Temporary Quarters Subsistence Expense" (TQSE), was checked "no." Another block on his orders, which was titled "remarks or other authorizations," stated that "new appointees and employees performing first-PDS travel to a foreign OCONUS [(outside the continental United States)] area are eligible for the miscellaneous expense allowance

¹ Mr. Gilbert was employed by a private company at the time of his appointment and living in California.

(MEA) portion of the foreign transfer allowance (FTA) [and] . . . [a]uthorized Temporary Quarters Subsistence Allowance (TQSA) up to 90 days.”

After his arrival in Guam, Mr. Gilbert incurred expenses for temporary lodging, subsistence, and other miscellaneous expenses. Mr. Gilbert submitted his claim for those expenses on three occasions. His claim was denied, and he was advised that he was not entitled to either TQSE or TQSA. In his claim submission to the Board, Mr. Gilbert sought reimbursement in the amount of \$4820.15 for TQSE “and other miscellaneous moving expenses,” which included hotel, subsistence, laundry, and miscellaneous expenses.

Discussion

Mr. Gilbert’s initial claim submission to the Board stated that he was seeking TQSE and “miscellaneous moving expenses.” In his second submission to the Board, Mr. Gilbert stated that he was seeking TQSA. FISC contends that as a newly appointed employee in Guam, a non-foreign OCONUS area, Mr. Gilbert is not entitled to TQSE, TQSA, or MEA, and, consequently, he cannot be reimbursed for any of his claimed subsistence costs.

The Joint Travel Regulations (JTR), which apply to Mr. Gilbert, state that TQSE “is a discretionary, not mandatory, allowance intended to partially reimburse an employee for reasonable subsistence expenses incurred when it is necessary for the employee and/or the employee’s dependent(s) to occupy temporary lodging incident to a PCS move.” JTR C5350. As a newly appointed employee, Mr. Gilbert is not authorized to receive TQSE. JTR C5356-C.1, C5080-B.6.c. Also, his travel orders, which stated that he was not entitled to TQSE, were consistent with the JTR.

Under the JTR, Mr. Gilbert’s entitlement to TQSA is subject to the rules set forth in the Department of State Standardized Regulations (DSSR). JTR C1003. The DSSR defines TQSA as a “temporary quarters assistance allowance . . . intended to assist in covering the average cost of adequate but not elaborate or unnecessarily expensive accommodations . . . plus reasonable meal and laundry expenses for a period not in excess of 90 days after first arrival at a new post of assignment in a foreign area.” DSSR 122.1. The JTR, citing that DSSR provision, states that TQSA “[c]annot be paid in [the continental United States (CONUS)] or any non-foreign OCONUS PDS area (DSSR 122.1).” JTR C5358-C.2. Under the JTR, non-foreign OCONUS areas include “Alaska and Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands, Guam, and U.S. Territories and possessions.” JTR app. A, pt. 1. Since Guam is a non-foreign OCONUS area, Mr. Gilbert is not entitled to receive TQSA. *See Joseph E. Cople*, GSBGA 16849-RELO, 06-2 BCA ¶ 33,332, at 165,290.

As a new employee assigned to Guam, Mr. Gilbert is also ineligible to receive MEA. The JTR states that “[a] new appointee or an employee performing first-PDS travel to a foreign OCONUS area is eligible for the MEA portion of the foreign transfer allowance (FTA). For FTA guidance, refer to DSSR, Section 240.” JTR C5305-B.1 (Note 1). Under the DSSR, the FTA is “for extraordinary, necessary and reasonable expenses, not otherwise compensated for, incurred by an employee incident to establishing him or herself at any post of assignment in a foreign area.” DSSR 241.1.a. As discussed above, Guam is a non-foreign OCONUS area, and Mr. Gilbert is not entitled to receive MEA.

Mr. Gilbert argues that he should be reimbursed for his subsistence expenses because he relied to his detriment upon his orders, which stated that he was authorized TQSA and MEA, and the statements of government employees. It is well established, however, that “an agency may not pay monies in violation of statute and regulation, even though the travel authorization purported to create the entitlement and an employee relied upon the authorization to his detriment.” *Joseph E. Copple*, 06-2 BCA at 165,290. Although Mr. Gilbert may legitimately feel that he incurred expenses in reliance upon incorrect information contained in his orders or incorrect advice from government personnel, this Board has recognized it cannot compensate an employee for that reason, and has stated the following:

In considering claims like this one, . . . the arbiter must balance the harm the employee would suffer if the claim were denied against the damage which would result to our system of government if federal officials were free to spend money in ways which are contrary to the strictures of statute and regulation. In making this balance, the Supreme Court has clearly come down on the side of protecting our system of government. We follow the Court in holding that although [the employee] has undeniably relied to his detriment on [the agency’s] promises, he may not be reimbursed because the law prevents the agency from honoring commitments made in its name by officials who do not have the power to make them.

Terry L. Cline, CBCA 861-RELO, 08-1 BCA ¶ 33,736, at 167,032 (2007) (quoting *Louise C. Mâsse*, GSBCA 15684-RELO, 02-1 BCA ¶ 31,694, at 156,573 (2001) (citing *Office of Personnel Management v. Richmond*, 496 U.S. 414 (1990); *Federal Crop Insurance Corp. v. Merrill*, 332 U.S. 380 (1947))). Accordingly, the Board cannot enlarge Mr. Gilbert’s rights beyond those contained in statute and regulation, and no reimbursement for his claim for subsistence expenses is allowed.

Additionally, Mr. Gilbert contends that he is entitled to reimbursement for his subsistence expenses because Guam is OCONUS and distant from the United States. As discussed above, Guam is a non-foreign OCONUS area, and reimbursement for TQSA and MEA are only allowed in the case of assignments to foreign OCONUS areas. The distance of Guam from the United States does not make it a foreign area for purposes of reimbursement. While the Board recognizes that Mr. Gilbert may not have been aware that Guam is a non-foreign OCONUS area, it is well established that an employee is charged with a constructive understanding of the applicable travel regulations, and an employee cannot be reimbursed because he or she mistakenly believed that reimbursement would be allowed. *Daniel H. Coney*, GSBICA 15444-RELO, 01-2 BCA ¶ 31,500, at 155,563.

Decision

The claim is denied.

H. CHUCK KULLBERG
Board Judge