



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

October 4, 2012

CBCA 2861-TRAV

In the Matter of ANN R. FACCHINI

Michael D. Facchini of Facchini & Facchini, P.A., Springfield, MA, appearing for Claimant.

Michael H. Saltalamachea, Office of Chief Counsel, Federal Emergency Management Agency, Department of Homeland Security, Washington, DC, appearing for Department of Homeland Security.

DANIELS, Board Judge (Chairman).

Ann R. Facchini claims that she should be paid a mileage allowance for having driven her own vehicle while on duty for the Federal Emergency Management Agency (FEMA) in September 2011. We agree with the agency that because the distance Ms. Facchini drove was essentially a commute between her home and duty station, she is not entitled to such an allowance.

Background

Ms. Facchini was a disaster assistance employee (DAE) of FEMA. A DAE, also known as a reservist, works for the agency on an on-call, intermittent basis in times of emergency or disaster.

Ms. Facchini maintains two residences. For about eight months of the year, she lives on Cape Cod. (She lists the town of her residence variously as Hyannis Park, Yarmouth, and West Yarmouth, Massachusetts.) Her driver's license and voting registration both show the Cape Cod address. For about four months of the year, she lives in Springfield,

Massachusetts. The Springfield residence is her mailing address. It is also her address of record in FEMA's files.

In September 2011, Ms. Facchini was deployed to Greenfield, Massachusetts, to assist in responding to a disaster there. While working in Greenfield, Ms. Facchini lived in her Springfield residence, which is thirty-eight miles from Greenfield. Her Cape Cod residence is approximately 180 miles from Greenfield.

As she began her work in Greenfield, Ms. Facchini asked her supervisor whether she would be paid a mileage allowance for driving to that location and back to Springfield. The supervisor stated that she would receive the allowance. Two weeks later, he told her that she could not receive it.

Discussion

FEMA's position is straightforward. The agency calls to our attention FEMA Instruction Number 8600.1, which provides, "DAE reservists living within a 50-mile radius of the disaster workplace . . . are not eligible for mileage allowance from the residence to the workplace. . . . Exceptions may be granted on a case-by-case basis upon written authorization by the Assistant Associate Director, DAP [Disaster Assistance Program]." FEMA says that because its records show Ms. Facchini's address as being less than fifty miles from her workplace, she was, for the purposes of this rule, living less than fifty miles from the workplace. The Assistant Administrator, Recovery (the official now vested with the authority granted in Instruction Number 8600.1 to the Assistant Associate Director, DAP) has not granted an exception. Consequently, FEMA concludes, under established rules, Ms. Facchini was not entitled to a mileage allowance.

Ms. Facchini offers three reasons why we should not accept this reasoning. First, she maintains that her supervisor's statement that she would be paid for mileage she traveled between Springfield and Greenfield was a verbal contract made by an authorized agency representative. Second, because her principal residence is on Cape Cod, far more than fifty miles from Greenfield, she is entitled to receive a mileage allowance. She says that she tried to change her address in the agency's records from Springfield to Cape Cod, but was unable to do so because a change can only be made by computer and she does not own a computer and is not skilled in using one. Third, Ms. Facchini notes that FEMA CFO [Chief Financial Officer] Bulletin #140 stated that "[e]ffective January 1, 2011, the mileage reimbursement rates by the General Services Administration (GSA) for Federal Government Travelers using privately owned vehicle (POV) conveyances are: . . . Automobile: \$0.51 cents per mile (If use of privately-owned automobile is authorized or if no Government-owned automobile is

available).” She contends that this statement represents a commitment by the agency to pay her fifty-one cents per mile traveled.¹

We agree with FEMA’s conclusion, though not entirely with its reasoning. The quoted portion of Instruction Number 8600.1 restricts eligibility for a mileage allowance from a DAE’s residence to his workplace; only reservists living more than fifty miles from the workplace qualify. This rule is consistent with provisions of another FEMA publication, FEMA Manual 6200.1, “Travel Regulations,” to which the instruction directs us. The Manual states that “[i]f a DAE, called to active duty, lives within 50 miles of the Disaster Field Office (DFO), per diem and travel will not be paid.” Whether Ms. Facchini was living within fifty miles of her workplace in Greenfield when on active duty is a question of fact, to be determined from all available evidence, not merely agency records. *Robert L. Shotwell*, CBCA 1887-TRAV, 10-2 BCA ¶ 34,514; *Susan M. Spillman*, CBCA 1619-TRAV, 10-1 BCA ¶ 34,371; *John P. DeLeo*, GSBCA 14042-TRAV, 97-2 BCA ¶ 29,156. Although Ms. Facchini’s legal residence may be on Cape Cod, her actual residence when working in Greenfield was her other home, in Springfield. *See Michael Bilodeau*, CBCA 686-TRAV, 07-2 BCA ¶ 33,716 (differentiating between permanent residence and place of abode); *Jennifer Harris*, GSBCA 16767-RELO, 06-1 BCA ¶ 33,256 (same). Essentially, while working in Greenfield, Ms. Facchini was commuting between her home and her workplace. Commuting is not official government business, so its costs are not reimbursable by the Government. *Orlando Sutton*, CBCA 2781-TRAV, 12-2 BCA ¶ 35,072, *reconsideration denied*, 12-2 BCA ¶ 35,075; *Shotwell*; *Spillman*; *Jerry R. Teter*, GSBCA 15292-TRAV, 00-2 BCA ¶ 30,957. FEMA’s Assistant Administrator, Recovery, has not determined that the

¹ In addition to filing this case with the Board, Ms. Facchini has made an equal employment opportunity complaint against her supervisor, accusing him of discrimination based on sex, age, and retaliation/reprisal (later expanded to include physical disability). We have no authority to consider such complaints and therefore do not discuss this one here. Ms. Facchini also alleges that because FEMA did not reimburse her for mileage traveled between Springfield and Greenfield, she did not have sufficient funds to pay charges on her government-issued credit card. She asks us to direct the agency to pay her the amount of outstanding charges on that card, in addition to the mileage allowance claimed. We have no authority to intrude into the relationship among agencies, employers, and credit card issuers, either. In resolving this case, we are constrained by the statutory direction to do nothing more than “settle claims involving expenses incurred by Federal civilian employees for official travel and transportation,” a power that is granted by Congress to the Administrator of General Services and delegated by the Administrator to the Board. *See* 31 U.S.C. § 3702(a)(3) (2006); *Betsaida Ramirez*, CBCA 1923-RELO, 10-2 BCA ¶ 34,501.

costs Ms. Facchini incurred for transportation merited an exception to this rule on the ground that they were anything other than normal commuting costs. Thus, her claim fails.

Any promise Ms. Facchini's supervisor may have made to her did not constitute a contract, even given her acceptance of the promise. The courts have made clear that absent specific legislation, federal employees derive the benefits and emoluments of their positions from appointment rather than from any contractual or quasi-contractual relationship with the Government, so the employees' entitlement to benefits must be determined by reference to statute and regulation, rather than to ordinary contract principles. *United States v. Larionoff*, 431 U.S. 864, 869 (1977); *Schism v. United States*, 316 F.3d 1259, 1274-76 (Fed. Cir. 2002) (en banc); *Chu v. United States*, 773 F.2d 1226, 1228-29 (Fed. Cir. 1985); *Zucker v. United States*, 758 F.2d 637, 640 (Fed. Cir. 1985); see also *Jenny L. W. Jones*, GSBCA 15808-RELO, 02-2 BCA ¶ 31,894; *Synita Revels*, GSBCA 14935-RELO, 00-1 BCA ¶ 30,716 (1999). Under FEMA's rules, Ms. Facchini's supervisor was not authorized to make an exception to the no-reimbursement-for-less-than-fifty-mile-commute restriction.

Whether Ms. Facchini's address as shown in FEMA's records was Springfield or Cape Cod has no bearing on our resolution of this case. The fact that she had a home in Springfield, and lived there while on duty in Greenfield, is pivotal. Thus, whether the agency's procedure for changing addresses of record is reasonable or not is of no consequence here. The announcement in FEMA CFO Bulletin #140 as to the mileage allowance for driving a privately-owned automobile is, as FEMA observes, merely a statement of fact. It applies when a mileage allowance is authorized and does not confer any benefit in and of itself.

Decision

The claim is denied.

STEPHEN M. DANIELS
Board Judge