



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

July 26, 2012

CBCA 2701-RELO

In the Matter of AMIE S. CLARKE

Amie S. Clarke, Springfield, VA, Claimant.

James E. Hicks, Office of Chief Counsel, Drug Enforcement Administration, Department of Justice, Springfield, VA, appearing for Department of Justice.

ZISCHKAU, Board Judge.

Amie S. Clarke, the claimant, seeks review of the denial of her claim for reimbursement, as a miscellaneous expense, of the non-refundable school enrollment contract registration fee for her two minor children which was forfeited when Ms. Clarke was reassigned from the Drug Enforcement Administration (DEA) Resident Office in San Jose, California, to DEA Headquarters in Arlington, Virginia. Because the non-refundable registration fee here is similar to other types of non-refundable contract fees which are reimbursable as miscellaneous expenses, the claimant is entitled to reimbursement of the fees up to the two-week basic gross pay limitation of section 302-16.103(b)(2) of the Federal Travel Regulation (FTR), 41 CFR 302-16.103(b)(2) (2011) (FTR 302-16.103(b)(2)).

Discussion

Amie S. Clarke is an employee of the DEA. On May 17, 2011, she was notified that she was being transferred from California to Virginia. Earlier, on April 4, 2011, Ms. Clarke signed enrollment agreements with the International School of the Peninsula, located in Palo Alto, California, for the education of her two minor children, in order to reserve places in the school for her two children for the 2011-2012 school year. The head of the school signed the enrollment agreements on April 16, 2011. As a condition of the agreements, Ms. Clarke paid a non-refundable registration fee of \$2500 for each of her children, by a check dated May 12, 2011, just five days before she was notified of her transfer.

On May 24, 2011, a travel authorization was issued to Ms. Clarke which included a flat rate miscellaneous expenses allowance (MEA) of \$1000 for an employee traveling with family. A second travel authorization was issued on July 19, 2011, which raised the MEA amount to \$1300 in accordance with an amendment to FTR 302-16.102. The background section published with the final rule containing the amendment states the following regarding the MEA:

Pursuant to 5 U.S.C. 5724a(f), an employee who is transferred in the interest of the Government is entitled to reimbursement for certain miscellaneous expenses. The purpose of the miscellaneous expense allowance (MEA) is to defray various contingent costs associated with discontinuing a residence at one location and establishing a residence at a new location. The costs covered include items such as fees for disconnecting and connecting appliances, cutting and fitting rugs, draperies, and curtains moved from one residence to another, utility fees or deposits that are not offset by eventual refunds, forfeiture of medical, dental, and other non-transferrable contracts, and the cost of automobile registration and driver's licenses.

The FTR provides that a MEA may be paid in one of two alternative amounts. A transferring employee without an immediate family is automatically entitled to a lump-sum of one week's basic gross pay, up to \$500, and an employee with an immediate family is entitled to a lump-sum of two weeks' basic gross pay, up to \$1000. If additional amounts are justified, with supporting documentation, MEA may be reimbursed up to a maximum of one or two weeks basic pay depending on whether or not the employee has an immediate family, not to exceed the maximum rate payable for a position at GS-13, Step 10, of the General Schedule provided in 5 U.S.C. 5332. Since the establishment of MEA in 1966, the lump-sum has only been increased twice. The last increase was on February 19, 2002.

76 Fed. Reg. 35,110 (June 16, 2011).

Ms. Clarke reported for duty at her new station in August 2011. On November 16, 2011, Ms. Clarke submitted a travel voucher claiming a MEA of \$5819.50, which included an amount of \$5000 for the forfeiture of her non-refundable enrollment fee paid to the International School of the Peninsula for her two children. On November 21, the agency notified Ms. Clarke that her forfeited enrollment contract expense was disallowed because "fees for educational expenses are not reimbursable under the miscellaneous expense entitlement." Ms. Clarke has filed a claim for the forfeited contract enrollment registration fees.

FTR 302-16.2 states that miscellaneous expenses are costs associated with relocating that are not covered by other relocation benefits detailed in FTR chapter 302. FTR 302-16.103 provides that one may claim an amount in excess of the fixed MEA amount prescribed in FTR 302-16.102 if authorized by the agency and

- (a) [s]upported by acceptable statements of fact, paid bills or other acceptable evidence justifying the amounts claimed; and (b) [t]he aggregate amount does not exceed [the employee's] basic gross pay (at the time [the employee] reported for duty, at [the] new official station) for: (1) [o]ne week if . . . relocating without an immediate family; or (2) [t]wo weeks if . . . relocating with an immediate family.

The amount authorized cannot exceed the maximum rate of grade GS-13 provided in 5 U.S.C. § 5332 at the time the employee reported for duty at the new official station.

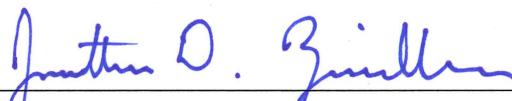
The agency cites our decision in *Derek M. Siegle*, CBCA 643-RELO, 07-1 BCA ¶ 33,571, for the rule that education expenses are not covered under the MEA beyond the basic MEA amount permitted under FTR 302-16.102. In *Siegle*, the claimant had sought reimbursement of the final two tuition payment installments for his daughter when he and his daughter moved before she could complete the school year at his old duty station. *Siegle* held that forfeited tuition payments were not recoverable as miscellaneous expenses based on the decisions in *Jeanette B. Wilbanks*, B-162828 (Nov. 16, 1967), and *John A. Lund, Jr.*, B-192741 (Jan. 17, 1979). In *Wilbanks*, the employee had claimed reimbursement for his daughter's \$100 per semester tuition at Towson State University which had been waived based on the daughter's pledge to teach in Maryland for two years following graduation from Towson State. When she decided to transfer to a California state college, in connection with her father's relocation to San Francisco, the father sought reimbursement of his daughter's tuition payments for four semesters. The Comptroller General concluded that the claimed expenses were not reimbursable miscellaneous expenses, stating that "it is not believed that a cost similar to that here involved is contemplated as reimbursable under the regulation." In *Lund*, the employee claimed reimbursement for the difference between in-state tuition at the University of Maryland and out-of-state tuition at the University of Colorado for his son when the employee was transferred from Baltimore, Maryland, to Denver, Colorado. Relying on *Wilbanks*, the Comptroller General ruled that the claimed tuition expenses were not covered by the miscellaneous expense provisions.

The facts here are distinguishable from those in *Siegle*, *Wilbanks*, and *Lund*. Those cases involved claims for reimbursing tuition payments, and we are not persuaded by the authorities cited by the agency for any blanket rule against reimbursing educational fees. Here, Ms. Clarke seeks reimbursement of a nonrefundable enrollment fee to secure spots in

the school that her two minor children had been attending for several years. An education enrollment contract for a minor child is similar to the other types of costs listed in the non-exclusive list of costs that are reimbursable where losses cannot be recovered by transfer or refund and are incurred due to early termination of a contract. We see no logical basis for distinguishing a non-transferrable education enrollment contract from other forms of non-transferrable contracts, such as some types of medical or dental contracts. We read the commentary in the final rulemaking for the 2011 revisions to the miscellaneous expense allowance quoted above to the same effect. We conclude that Ms. Clarke's forfeited enrollment contract fee is a reimbursable miscellaneous expense, subject to the two-week pay limitation of FTR 302-16.103(b)(2).

Decision

Ms. Clarke has demonstrated that she is entitled to reimbursement of the forfeited contract enrollment fees to secure slots for her two minor children. Her miscellaneous expense is limited to the two-week pay limitation of FTR 302-16.103(b)(2). Accordingly, the agency shall reimburse Ms. Clarke for those expenses, up to the prescribed limitation.



JONATHAN D. ZISCHKAU
Board Judge