



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

May 29, 2013

CBCA 3294-RELO

In the Matter of JOHANN SCHLAGER

Johann Schlager, Patuxent River, MD, Claimant.

Stephanie J. Quade, Office of Counsel, Naval Air Warfare Center Aircraft Division, Department of the Navy, Patuxent River, MD, appearing for Department of the Navy.

GOODMAN, Board Judge.

Claimant is an employee of the Department of the Navy. He has asked this Board to review a decision by the agency denying reimbursement of costs he incurred which he alleges were incident to his move to his duty station as a new appointee.

Background

On August 1, 2012, the agency issued a tentative offer of employment to claimant. The offer stated:

This email is to inform you that you have been TENTATIVELY SELECTED for the position of Mechanical Engineer, DP-0830-02, . . . Please note this is a TENTATIVE OFFER ONLY. If a permanent job offer can be extended, you will be given sufficient time to give notice to your current employer and an effective date will be requested at that time. You are required to complete and return a copy of the attached Declaration for Federal Employment (OF-306). Please sign the OF-306 as an "Applicant" in section 17A. Please also forward the following additional documents: DD-214 (member 4 copy) or Terminal Leave Authorization APC/DAC membership certificate Most recent SF-50 Other (PCS Form) . . . After receipt and review of the requested forms, you will be contacted concerning this tentative job offer. Please note, before a firm

job offer can be finalized, all Federal government requirements [must be met], including but not limited to pre-employment security, clearance of the Priority Placement Program, verification of qualifications, official transcripts

Claimant states that he submitted the requested documents, including a form entitled Travel and Transportation Questionnaire Allowances for New Appointees on August 2, 2012. On this form he indicated he wished to move himself to the duty location. On August 10, 2012, he submitted the documents for his background check. On August 13, 2012, claimant had a telephone conversation with the individual in charge of his application process and they discussed an unofficial start date of August 27, 2012. On August 20, 2012, the agency received notice that claimant's initial background check was complete.

That same week, claimant was notified that the job advertisement would not close until early September, so he could not start when originally anticipated. By that time claimant had paid a security deposit on an apartment and needed to move in by August 25. On August 25, 2012, claimant incurred \$238.20 of expenses consisting of a U-Haul rental, safe-tow insurance, and gasoline.

On September 20, 2012, the agency issued a verbal final offer of employment to claimant, and claimant accepted the offer the same day. On September 27, 2012, the agency issued written confirmation of its final offer of employment to claimant. The final offer letter included an effective date of employment of October 9, 2012. The final offer letter also included the following statement: "You are advised not to incur relocation expenses for which reimbursement is desired until travel orders have been issued by this office." The same day, the agency executed claimant's official travel order, authorizing relocation expenses up to \$1293.

On October 5, 2012, Claimant submitted a travel voucher requesting reimbursement of relocation expenses in the amount of \$238.20 for the expenses mentioned above. The agency denied claimant's travel claim for relocation expenses, stating that "these expenses were incurred prior to your official offer being made."

Claimant requested this Board to review the agency's denial of reimbursement.¹

¹ The agency advises claimant's travel orders authorized reimbursement of mileage and shipment of household goods, but claimant did not seek reimbursement of these expenses on his travel voucher. This Board does not review claims for expenses that have not been submitted to the agency. Board Rule 401(c) (48 CFR 6104.401(c)(2012)).

Discussion

The agency relies upon Joint Travel Regulations (JTR) chapter 2, C2200 which reads:

A. Travel Order. A document, issued/approved by the Secretarial Process, directing travel to/from/between designated points and serving as the basis for reimbursement by the [Government] of official travel, transportation, and reimbursable expenses. . . .

C. Issuance Prior to Travel. An order should be issued before travel is performed.

D. Unauthorized Reimbursement

1. Travel reimbursement is not authorized when travel is performed before receipt of a written/oral order.

2. Expenses incurred before travel was contemplated/directed are not reimbursable.

The agency contends that claimant incurred relocation expenses without the proper authorization to do so, oral or written. The agency acknowledges that claimant had received a tentative offer letter on August 1, 2012. However, the agency asserts that claimant incurred \$238.20 of relocation expenses on August 25, 2012, without an official travel order. Claimant did not receive a final offer of employment until September 20, 2012, and did not receive his travel orders until September 27, 2012. Accordingly, the agency concluded that claimant's relocation expenses were not reimbursable.

The agency is correct that the general rule is that a transferred employee may not be reimbursed for expenses incurred prior to receipt of formal notification of a pending transfer. However, an exception to the general rule may be made and costs reimbursed if the agency had manifested a clear "administrative intent" to transfer the employee when the costs are incurred. *Jason A. Johnson*, CBCA 2608-RELO, 12-1 BCA ¶ 34,914; *Jorge L. Gonzalez*, CBCA 984-RELO, 08-2 BCA ¶ 34,004; *Rudolf Gomez, Jr.*, GSBCA 15735-RELO, 02-2 BCA ¶ 31,984; *Dennis A. Edwards*, GSBCA 14943-RELO, 00-1 BCA ¶ 30,741 (1999).² Evidence other than the issuance of travel orders may be acceptable to establish an

² While claimant was a new appointee and not a transferee, these principles are applicable to new appointees as well.

administrative intent to transfer an employee. *Gonzalez*, 08-2 BCA at 168,162; *see also Byron L. Wells*, CBCA 1206-RELO, 08-2 BCA ¶ 33,979; *Michael J. Halpin*, GSBCA 14509-RELO, 98-1 BCA ¶ 29,730. Whether an agency has manifested a “clear intention” to transfer an employee prior to issuance of formal notification of its intent depends on the facts and circumstances of the specific situation presented for decision. In addition, the agency must determine that the expenses to be reimbursed were incurred incident to the anticipated transfer. *Connie F. Green*, GSBCA 15301-RELO, 01-1 BCA ¶ 31,175 (2000).

Telephone contacts in which a definite offer is made, even though contingent upon higher level approvals or receipt of medical and security clearances, may serve to establish the requisite administrative intent. *Jason A. Johnson*; *Brandon J. Thorpe*, CBCA 2103-RELO, 11-1 BCA ¶ 34,687, at 170,847, and cases cited therein; *Connie F. Green*; *Shirley Rae Vandeburg*, GSBCA 15626-RELO, 02-1 BCA ¶ 31,782.

We find that claimant is entitled to reimbursement of the costs at issue, as the evidence clearly suggests that an administrative intent to hire claimant existed before he incurred the expenses for which he seeks reimbursement. Claimant had a written tentative offer of employment contingent upon conditions which were ultimately fulfilled, and telephone contact with the agency’s employment personnel with regard to his pending offer of employment. By the time he incurred the expenses at issue, he had already submitted all necessary applications forms and received initial approval of his background check. The only condition that remained was the closing of the advertising period for the position for which he had already received the tentative offer. While the costs were incurred before he received the final offer letter, it is clear that the costs he incurred were incident to his move to the anticipated duty station.

Decision

Claimant is entitled to reimbursement of \$238.20, as these expenses were incurred after receipt of administrative intent to hire him and incident to his move to his duty station.

ALLAN H. GOODMAN
Board Judge