UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

July 31, 2013

CBCA 3428-RELO

In the Matter of CHARLES FROST

Charles Frost, Hadley, MA, Claimant.

Cindy Osif, Interior Business Center, Department of the Interior, Denver, CO, appearing for Department of the Interior.

GOODMAN, Board Judge.

Claimant, Charles Frost, an employee of the Department of Interior, has asked this Board to review the agency's denial of reimbursement of certain relocation costs.

Background

In October 2012, claimant was issued travel orders as a new hire for relocation from his residence in Alaska to his duty station in Massachusetts. His travel orders authorized reimbursement for use of his privately-owned vehicle (POV) at the rate of $.555 per mile. After his relocation was complete, claimant calculated his mileage reimbursement according to the rate on his travel orders and submitted his voucher. The agency then determined that the mileage rate on the travel orders was incorrect and calculated claimant's mileage reimbursement according to the rate it believed to be correct - $0.345 per mile. The agency's calculation resulted in reimbursement of $1343 less than claimed by claimant. Claimant seeks reimbursement of $1343, stating that he is entitled to have his reimbursement calculated based upon the mileage rate authorized in his travel orders.

Discussion

The Federal Travel Regulation (FTR) states that the mileage reimbursement rate for relocating employees is "the same as the moving expense mileage rate established by the Internal Revenue Service (IRS) for moving expense deductions." 41 CFR 302-4.300 (2012). For 2012, the IRS rate for moving expense deductions was $.23 a mile. According to various agency memoranda and handbooks,[1] a higher mileage rate for Outside the Continental United States (OCONUS) travel is mandated, as a matter of agency policy, as 150% of the IRS rate as specified in the FTR. Based upon this agency-mandated rate for OCONUS travel, the correct rate that should have been entered on the travel orders was therefore $.23 x 150% = $0.345 per mile, the rate the agency used to calculate claimant's mileage reimbursement.

Claimant states that he has been advised by the agency that the authorizing official who drafted his travel orders has admitted that the rate of $0.555 in his travel orders was erroneous. She stated that she "looked up the rate and thought it was $0.555." Apparently, she saw the IRS 2012 rate for deduction for business miles driven, which was $0.555 per mile, and believed this was the rate to use.

Claimant does not dispute that the rate of $0.555 per mile that was entered on his travels orders was incorrect. However, he believes he is entitled to this rate, because 41 CFR 302-4.302 (2012) allows an agency to authorize a higher mileage rate for OCONUS travel when the costs of driving a POV from a duty station OCONUS justify a higher mileage rate advantageous to the Government. Claimant notes that 41 CFR 301-11.303 would allow reimbursement for actual expenses. Claimant therefore believes the rate of $0.555 per mile would be within the amount allowable pursuant to these two regulations.

Claimant also cites *William T. Cowan*, GSBCA 16525-TRAV, 05-1 BCA ¶ 32,906, asserting that the decision upholds his entitlement to the rate specified in his travel orders. In that case, the employee was authorized to travel on temporary duty by POV. The mileage and dates of travel were correctly entered on his travel orders. After travel was completed, the agency attempted to limit the cost of the trip to the constructive cost of traveling by air. The Board held that since the employee was authorized to travel by POV, he was entitled to the costs authorized in the travel orders. The decision stated that "the travel authorization is

[1] These sources, cited in the agency's response, are: Department of Interior, Financial Administration Memorandum No. 2008-017; Permanent Change of Station Policy Guide (October 1, 2008); Fish and Wildlife Service Memorandum DFM/039347 (December 2008); Fish and Wildlife Service, Employees on the Move Handbook.

a record of vested entitlements and may not be administratively altered after the fact to increase or decrease the benefits in the absence of clear error." 05-1 BCA at 163,033.

Claimant does not prevail in this case. The *Cowan* decision does not support claimant's position, because there is no dispute that the mileage rate of $0.555 per mile specified in claimant's travel orders was a clear error. While 41 CFR 302-4.302 allows an agency to authorize a higher mileage rate up to a maximum for OCONUS travel, the agency-mandated rate of $0.345 per mile is that higher rate. The agency did not make a determination that the rate of $0.555 was justified as an even higher rate for claimant's travel. Additionally, reimbursement of actual expenses permitted under 41 CFR 301-11.303 includes lodging, meals, and incidental expenses, but not the cost of operating a motor vehicle. 41 CFR 302-4.304 does allow for reimbursement of actual expenses for use of a POV for OCONUS relocation. However, claimant was not authorized reimbursement of actual expenses pursuant to this regulation.

The agency has admitted its error, but this does not offer claimant the relief he seeks. This Board has long recognized that an agency cannot expand employee entitlements that are not authorized by statute or regulation. Detrimental reliance on erroneous advice from a government official will not confer on a claimant entitlement to recovery, where there is no authority under statute or regulation. *Beth A. Wilson*, CBCA 600-RELO, 07-1 BCA ¶ 33,546.

Decision

The claim is denied.

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ALLAN H. GOODMAN
Board Judge