



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

February 6, 2013

CBCA 3080-TRAV

In the Matter of ANDREW G. CHRITTON

Andrew G. Chritton, Washington, DC, Claimant.

Scott A. Tiedt, Director, Transportation & Travel Management Division, Department of State, Washington, DC, appearing for Department of State.

SOMERS, Board Judge.

Claimant, Andrew G. Chritton, a member of the United States Foreign Service, contests the Department of State's (agency's) assessment of a charge resulting from the improper use of funding for tickets for round-trip travel for a dependent. In assessing the charge, we find that the agency correctly applied the governing regulation, the Foreign Affairs Manual (FAM). Consequently, we sustain the agency's determination.

Background

In late 2010, claimant served as the senior civilian representative in Maza-e-Sharif, Afghanistan. Claimant asked the agency whether a travel allowance existed that would pay for his son, under the age of twenty-one, to travel from his university in Bozeman, Montana, to his home in Virginia during the holiday break.

After much internal discussion about the interpretation of the applicable regulations, agency representatives advised claimant that his son did not qualify for educational travel because his family was on an "Involuntary Separate Maintenance Allowance," or ISMA. However, the agency advised claimant that there was a provision in the ISMA that allows the

post to pay for travel for children of separated parents. In this case, the travel for children of separated parents applies because claimant's assigned post was unaccompanied, meaning that the assignment caused him to be involuntarily separated from his family.

Claimant arranged for round-trip tickets for his son to travel from Montana to Virginia. The agency mistakenly issued the tickets under the inapplicable educational travel provisions and improperly charged the travel costs to claimant's PCS travel authorization. Once claimant submitted his travel voucher, the agency discovered the error. Not only did claimant's son not qualify for travel under the educational travel provisions, but, in addition, because his son traveled within the continental United States, the provisions for reimbursement of travel under the ISMA did not apply. The ISMA required that the dependent travel to an alternate point abroad to meet the employee. Accordingly, the agency determined that claimant owed the agency \$1200 for the cost of the ticket.

Claimant sought relief from the claim, stating that had he been correctly advised at any time prior to the time the travel was performed, he would have paid for the travel with frequent flyer miles or searched out a better price. Additionally, had he been informed of the restriction, he could have had his son fly to an airport in eastern Canada (which would have been authorized under the applicable regulation) and then personally paid the lower fare from that point.

Claimant asked for the agency to waive repayment. The agency declined, stating that:

While Embassy Kabul's Management Section gave Mr. Chritton inaccurate information regarding travel regulations concerning his dependent children, employees are responsible for the payment of any charges incurred through failure to comply with the governing regulations, regardless of who may have assisted the traveler in making travel arrangements (14 FAM 515).

In response, claimant submitted a claim to the Board.

Discussion

Statute grants the Secretary of State the authority to pay the travel-related expenses of members of the Foreign Service and their families. 22 U.S.C. § 4081 (2006). The FAM implements that statutory authority. *Raymond Daniel Toma, Jr.*, CBCA 1499-RELO, 09-2 BCA ¶ 34,152. For children under the age of twenty-one, 3 FAM 3753.3 provides for the payment of travel as follows:

A dependent Foreign Service child as defined by 3 FAM 3753.1 under age 21 who is neither eligible for an educational travel allowance nor for travel to visit separated parents, is authorized one round trip per year to a post abroad for purposes of visiting his or her parent(s) assigned abroad.

In addition, 3 FAM 3753.5 provides that:

Where travel is authorized . . . travel may be authorized only to the post of assignment unless the post is unaccompanied In such a case, the child may travel to meet the parent at an alternate destination abroad with the cost not to exceed the cost of round trip travel . . . between the residence of the child if the child does not reside with the other parent and the employee's post of assignment.

That the agency improperly authorized travel and, after travel had occurred, later determined that claimant would be responsible for payment of the travel charges is unfortunate, but does not serve as a basis for waiving repayment. As we have stated in numerous cases, we are constrained by law to rule that where a law or regulation specifically prohibits a payment, erroneous advice by a government official cannot negate that prohibition. *Jesus R. Gonzalez*, CBCA 2777-TRAV, 12-2 BCA ¶ 35,137.

In this case, the FAM provides the remedy for the erroneous payment. It states that employees are required to repay the travel and transportation costs of a child's trip if it is determined subsequently that the child was ineligible to travel under these provisions. *See* 3 FAM 3754; 14 FAM 515 (employees are responsible for the payment of any charges incurred through failure to comply with the governing regulations, regardless of who may have assisted the traveler in making travel arrangements). Claimant is responsible to repay the travel expenses incurred in this situation.

Decision

The claim is denied.

JERI KAYLENE SOMERS
Board Judge