



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

March 27, 2014

CBCA 3578-RELO

In the Matter of JOSEPH F. BOND

Steven Zimmerman of The Zimmerman Law Firm, Fairfax, VA, appearing for Claimant.

James E. Hicks, Office of Chief Counsel, Department of Justice, Springfield, VA, appearing for Department of the Justice.

WALTERS, Board Judge.

Claimant, Joseph F. Bond, challenges a claim by his former agency, the Department of Justice, Drug Enforcement Administration (DEA), for repayment of temporary quarters subsistence expenses (TQSE) that he received in connection with his relocation from Madrid, Spain, to the DEA headquarters in Arlington, Virginia.

Background

Claimant, a resident of Washington, D.C., from 2004 through 2009 had been serving with the DEA as its country attache in Madrid, Spain. As part of his posting to Madrid, he had signed a service agreement calling for him to remain at his position for a minimum of thirty-six months. He was at that position for substantially more than the minimum period. In September 2008, he was approved for a lateral reassignment as a group supervisor in DEA's country office in Kabul, Afghanistan. In connection with this reassignment, he was asked to sign another service agreement, one which required a minimum service commitment of twenty-four months. He executed that document as well, and was issued travel orders allocating funding for his travel expenses to Kabul.

On June 11, 2009, the eve of his scheduled departure from Madrid to Kabul, however, claimant received a telephone call from the section chief of the DEA Afghanistan enforcement operations office, advising that he was not to leave Madrid for Kabul the next day, but was to remain in Madrid until he received further notice from the agency. Subsequently, claimant received a copy of a memorandum dated July 1, 2009, issued by the DEA Career Board Executive Secretary. The very terse memorandum advised that an “ad hoc career board” had rescinded the reassignment to Kabul and had reassigned claimant to the DEA headquarters in Washington, D.C. (actually, Arlington, Virginia). An amended travel authorization was issued, changing claimant’s PCS assignment from Kabul to DEA headquarters, and claimant was thereunder authorized reimbursement for, among other expense items, temporary quarters in Washington, D.C. He was not provided or asked to sign a substitute service agreement for the transfer to Washington, however.

On or about July 19, 2009, claimant reported to DEA headquarters. While in Madrid, claimant had entered into a long term lease to rent out his residence in Washington, D.C. When claimant had been assured of the approval of his reassignment to Kabul in late 2008, he had negotiated and extended the term of that lease. Accordingly, he was in immediate need for housing upon his return to Washington, D.C. He applied for TQSE, to cover his lodging at a hotel near the DEA headquarters. Notwithstanding that it failed to provide him with a service agreement requiring claimant to commit to a period of further government service in connection with his reassignment to Washington, D.C., the agency approved TQSE reimbursement for an initial period of thirty days and for two extensions of thirty days each. Claimant was reimbursed for the ninety day total in the amount of \$12,598.31.

On October 10, 2009, less than three months into his new assignment, claimant voluntarily retired from government service for “personal reasons.” It was not until April 15, 2013, some three and one-half years later, that claimant was notified by the DEA that he was indebted to the Government for the \$12,598.31 of TQSE reimbursement, “for failure to meet the agreed upon period of service specified in the Service Agreement.” An agency appeal was denied by letter of August 29, 2013. Thereafter, claimant sought review from this Board.

Discussion

The agency’s payment of TQSE in this case violated the applicable statute and regulations. Reimbursement of TQSE to government employees who are transferred is provided for under 5 U.S.C. § 5724a(c) (2006), which reads, in pertinent part:

- (1) *Under regulations prescribed under section 5738*, an agency may pay to or on behalf of an employee who transfers in the interest of the Government—

(A) actual subsistence expenses of the employee . . . for a period of up to 60 days while the employee . . . is occupying temporary quarters when the new official station is located within the United States;

(2) The period authorized in paragraph (1) of this subsection for payment of expenses for residence in temporary quarters may be extended up to an additional 60 days if the head of the agency concerned or the designee of such head of the agency determines that there are compelling reasons for the continued occupancy of temporary quarters.

(Emphasis added.)

Thus, payment of TQSE is to be governed by the Federal Travel Regulation (FTR), which is promulgated by the Administrator of General Services pursuant to 5 U.S.C. § 5738. FTR 302-2.101 (41 CFR 302-2.101) makes clear that an agency is permitted to provide an employee with relocation expenses – which would include TQSE reimbursement – “[o]nly after an employee has signed a service agreement to remain in service for the period specified in [FTR] 302-2.13.” Under FTR 302-2.13, an employee is advised that he is required to sign a service agreement for a minimum period of twelve months in connection with a transfer to a post within the continental United States.¹ And under FTR 302-2.17, an employee is cautioned: “If you fail to sign a service agreement, your agency will not pay for your relocation expenses.” Although the absence of a service agreement has been held “not fatal” to the recovery of TQSE expenses, where an agency fails to offer a service agreement to an employee for signature and where the employee actually remains with the Government after the transfer for more than the service period that would have been required under such an agreement, *Regina V. Taylor*, GSBCA 13650-RELO, 97-2 BCA ¶ 29,089 at 144,806, citing *Thomas D. Mulder*, 65 Comp. Gen. 900 (1986), and *Baltazar A. Villarreal*, B-214244 (May 22, 1984), that was not the case here. Claimant left government service less than three months after reporting for duty in Washington.

Where an agency has erroneously paid an employee benefits such as TQSE without proper authority under statute and regulation, it is entitled to recover monies paid. *Virgil G. Hobbs, III*, GSBCA 16625-RELO, 05-2 BCA ¶ 33,078 at 163,947. Under the circumstances, DEA may wish to consider a waiver or reduction of the amount due from claimant. It is recognized, however, that waiver is a matter within the sole discretion of the agency, in

¹ An employee is not required under the regulations to sign a service agreement in connection with a temporary change of station (TCS). FTR 302-3.410. This exception would not apply to claimant’s transfer to Washington, D.C., which was a permanent change of station.

accordance with its own regulations, and is not within the purview of this Board's review function. *Id.*; *Tripp Boone*, GSBCA 16023-RELO, 03-2 BCA ¶ 32,356 at 160,063.

Decision

Claimant is indebted to the Drug Enforcement Administration in the amount of \$12,598.31.

RICHARD C. WALTERS
Board Judge