



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

July 14, 2015

CBCA 4746-RELO

In the Matter of PATRICK M. MAYETTE

Patrick M. Mayette, Virginia Beach, VA, Claimant.

Thomas S. Spahr, Director, Travel Functional Area, Enterprise Solutions and Standards, Defense Finance and Accounting Service, Indianapolis, IN, appearing for Department of Defense.

DANIELS, Board Judge (Chairman).

Patrick M. Mayette served his country as a civilian employee of the Department of the Navy in Naples, Italy for more than five years. The circumstances of the conclusion of his tour of duty were unusual, and the Navy's orders for the return of him and his family to the United States were inartfully drafted and were amended on several occasions. The agency's intent, however, remained constant: Mr. Mayette and his family were to move back to their previous home in Virginia, where he would assume another position in the agency, and various relocation benefits would be provided. In response to his claim for those benefits, the Defense Finance and Accounting Service (DFAS) has misunderstood both the circumstances and the nature of the claim. We grant the claim, except for the portion of it which addresses a relocation income tax allowance; that allowance will have to be recalculated after the additional benefits we direct have been provided.

Background

Mr. Mayette's tour of duty in Italy was originally scheduled to end in March 2013. Due to administrative difficulties, the Navy was unable to replace him with a successor in March; it asked that he stay on until June 30, and he agreed to do so. By early June, however, it became apparent that a successor could not be assigned so quickly. Mr. Mayette

agreed to extend his tour further, but permits for his wife and daughters to remain in Italy would expire on June 30, and for personal reasons, those family members desired to return to the United States by that date. The Navy issued orders for his wife and daughters to return without him. Because the human resources personnel in Italy were uncertain how to write orders for the early return travel of the family members, however, the orders did not fully reflect the officials' intent. As explained by the commanding officer of the Naval Facilities Engineering Command Europe and Southwest Asia, these orders were intended to be permanent change of station (PCS) orders which included a number of relocation benefits, including a miscellaneous expense allowance (MEA). Part of the arrangement, as explained by the command counsel and comptroller at Mr. Mayette's new command in Virginia, was that the agency pay a lump sum for temporary quarters subsistence expenses (TQSE) for him and his family upon their arrival in the United States.

Mr. Mayette's wife and daughters left Italy and returned to the United States on June 27; the Navy paid for their airfare. Mr. Mayette accompanied them, at his own expense and using annual leave; on July 11, he traveled back to Italy, again at his own expense. A memorandum sent to us by DFAS appears to indicate that that agency believes – incorrectly – that Mr. Mayette traveled with his family on their travel orders and seeks reimbursement for the cost of his airfare on this trip. Mr. Mayette's family lived in temporary quarters in Virginia for two months, until their household goods arrived and could be moved into a residence the family owned.

Upon returning to Italy in July, no longer on leave, Mr. Mayette resumed his position there. Finally, in September, the Navy was able to transfer another employee to Naples to replace him. The Navy amended the June orders regarding travel of his family to cover his own return to the United States. He came home on September 20 on a flight paid for by the agency. Two days later, he began work in Virginia.

After Mr. Mayette returned to the United States, the Navy paid him a miscellaneous expense allowance, per diem for his wife and daughters during their June flight and for himself during his September flight, and a withholding tax allowance (part of the relocation income tax allowance). It did not pay the lump sum TQSE amount to cover expenses his family incurred upon their return. In February 2014, DFAS demanded that he repay some of the amount he had already been paid – the portion covering per diem for Mr. Mayette on his flight from Italy to the United States and the MEA. DFAS thought these allowances should not have been paid because PCS orders had never been issued to Mr. Mayette.

Discussion

The Department of Defense's Joint Travel Regulations (JTR) provide that a travel order "[m]ay be retroactively corrected to show the original intent." JTR C2205-A.1.a. This statement reflects Board decisions that "[a]n agency may always amend a PCS authorization if all the facts and circumstances show that items that were originally intended to be included were omitted through error or inadvertence." *Jeffery A. McQuillan*, CBCA 3472-RELO, 13 BCA ¶ 35,422; *see also Donald N. Striejewske*, CBCA 2029-RELO, 10-2 BCA ¶ 34,469.

The circumstances surrounding the final months of Mr. Mayette's tour of duty in Italy make clear that the Navy intended at all times to transfer him from Naples to a position in Virginia and that any orders which were issued to him to accomplish that move were PCS orders. Mr. Mayette's situation was unique in several ways – the Navy was unable to send a successor to Italy to replace him as quickly as planned, Mr. Mayette was generous in twice agreeing to extend his tour of duty to accommodate the agency's needs, and his wife and daughters needed to return to the United States before the second of these extensions had run its course. The agency officials who prepared travel orders did not fully comprehend how to deal with this situation; they did not caption the initial orders (which covered the return travel of Mr. Mayette's family members only) as PCS orders, and they never issued separate orders, captioned as PCS orders, to Mr. Mayette. The initial orders could only have been issued as an adjunct to a PCS for Mr. Mayette, however, and they were amended specifically to cover his PCS upon his return to the United States.

Based on statements made by Navy officials in Italy and Virginia, we find that the orders were intended to have included a MEA and a lump sum TQSE payment to cover costs incurred by the family upon their return to Virginia. Mr. Mayette is due a per diem allowance for the day on which he traveled from Italy to Virginia; this travel was for the purpose of making a PCS and had nothing to do with the flight he took in June involving the same locations, which was taken on his own time and at his own expense. *See* JTR C5060-D.4.b (per diem to be paid for travel incident to a PCS). DFAS acted improperly in attempting to recover the MEA and per diem allowance. Payment of the lump sum amount for TQSE will necessitate a recalculation of the amount of withholding tax allowance.

In his comments on DFAS's position, Mr. Mayette asks us also to award him "any and all other compensatory damages for pain, suffering and hardship as a result of forcing a civil servant to go through this process to collect basic entitlements and for the excessive length of time taken to process the claim to date," as well as "[a]ny and all punitive damages that may be available for what appears to be DFAS's malicious and callus [sic] handling of this claim and retaliatory conduct." Although we sympathize with the claimant and agree that DFAS's actions were unfounded, we have no basis for assessing the motive for these actions,

and we have no authority to award any compensatory or punitive damages. Our statutory charge is to settle claims against the United States Government “involving expenses incurred by Federal civilian employees for official travel and transportation, and for relocation expenses incident to transfers of official duty station.” 31 U.S.C. § 3702(a)(3) (2012). We have settled Mr. Mayette’s claim by directing payment to him of the items he contests. Settlement is confined to the claim itself, however; it does not encompass payment of money for other purposes.

STEPHEN M. DANIELS
Board Judge