



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

July 31, 2015

CBCA 4022-RELO

In the Matter of SHERI L. ELLIS-SMITH

Shaun Southworth of Southworth PC, Atlanta, GA, appearing for Claimant.

Jennifer McGuire, Director of Budget and Finance, Albuquerque Service Center, Forest Service, Department of Agriculture, Albuquerque, NM, appearing for Department of Agriculture.

HYATT, Board Judge.

Claimant, Sheri L. Ellis-Smith, a former employee of the Department of Defense, was employed by an international non-profit organization in Bahrain when she was selected for, and accepted, a position with the Forest Service. The Forest Service authorized relocation benefits, including her transportation to the United States, as well as the cost of transporting her household goods and personal vehicle to her new duty station in Ketchikan, Alaska. Claimant has requested the Board's review of the agency's subsequent decision to disallow reimbursement of these expenses because it determined she was eligible for reimbursement of the expenses by the Department of Defense. For the reasons stated, we find that the Forest Service is responsible for reimbursing Ms. Ellis-Smith in accordance with the travel orders it issued.

Background

In 2005, Ms. Ellis-Smith was transferred by the United States Army Corps of Engineers from her then-permanent duty station in Fort Greely, Alaska, to a post in Wiesbaden, Germany. She remained employed in federal service overseas in various locations until February 10, 2013, when she resigned from a position with the Defense Information Systems Agency in Bahrain. She did not return to the United States at that time, but instead accepted employment with an international non-profit organization with an office

in Bahrain. Ms. Ellis-Smith vacated her government-subsidized housing when she resigned from federal service in February 2013, and moved to another apartment in Bahrain. She also renewed her visa and residence permit in order to remain in the country. She had no definite plans to return to the United States at that time.

In May of 2013, the Forest Service selected Ms. Ellis-Smith to fill a position in Ketchikan, Alaska, and she accepted the agency's offer. Travel orders were issued for her return to the United States from Bahrain. The orders noted that Ms. Ellis-Smith was not a current federal employee. The orders provided for various benefits, including travel to claimant's new duty station, transportation of household goods, and shipment of her personally owned vehicle from Bahrain to the United States. Ms. Ellis-Smith traveled under these orders.

After Ms. Ellis-Smith completed her travel, the Forest Service revisited her eligibility for relocation benefits. The agency concluded that Ms. Ellis-Smith should have submitted claims for the expenses for returning from Bahrain to Fort Greely, Alaska to the Department of Defense, which was obligated to reimburse her for these amounts. The Forest Service further informed claimant that the only expenses it could reimburse were those required to complete a move from Fort Greely to Ketchikan. The Forest Service explained its position as follows:

We [have] determined we must adjust the relocation allowances to comply with the Federal Travel Regulation[] (FTR). You were selected for a Forest Service . . . position at an official duty station in Ketchikan, Alaska as a reinstated employee. You are limited to new appointee allowances provided in FTR 302-31, Table B. Your original travel authorization . . . was issued from Bahrain to Alaska.

Documentation you recently provided states your actual residence at the time of appointment to the place of employment Outside the Continental United States (OCONUS) with a Department of Defense . . . component was Ft. Greely, Alaska. Provisions of 5 USC § 5722 provide for your return travel and transportation, at the government's expense, to your actual residence at the time of assignment to duty OCONUS. In accordance with Joint Travel Regulations (JTR) paragraph C5030, the losing activity must pay the movement expenses to the actual residence. Based on this information, the [Department of Defense] or [Department of Defense] component is responsible for your (and dependent) return travel and transportation expenses to your actual residence at the time of your appointment.

Based on this assessment, the Forest Service informed Ms. Ellis-Smith that it was correcting the original travel authorization to limit her relocation allowances to the amounts appropriate for a move from Fort Greely to Ketchikan, and advised her to submit her claims for travel and transportation expenses for the move from Bahrain to Fort Greely to the appropriate Defense Department component. Ms. Ellis-Smith seeks the Board's review of the agency's disallowance of the amount of \$7328.88 in expenses she incurred in moving from Bahrain to Ketchikan.

Discussion

In its response to claimant's request for the Board's review of its decision, the Forest Service points out that under 5 U.S.C. § 5722 (2012), the agency that transfers an employee to a post overseas is expected to bear the expense of returning that employee to his or her place of residence in the United States at the time of the assignment to the overseas location when the tour is completed. Paragraph C5030 of the JTR confirms that the losing overseas activity is responsible for this expense. Accordingly, the Forest Service reasons, the Defense Department was required to bear the expense of returning Ms. Ellis-Smith to Fort Greely, and its own obligation is limited to the expense of moving her from Fort Greely to Ketchikan.

The Board has recognized that once an employee has successfully completed an OCONUS tour of duty, the agency must pay the cost of relocating that employee either to the home of record or other location selected by the employee, up to the constructive cost of returning the employee to his or her home of record at the time of transfer. *See Sara E. Young*, CBCA 3540-RELO, 14-1 BCA ¶ 35,607 (2013); *William G. Sterling*, CBCA 3424-RELO, 13 BCA ¶ 35,438, *reconsideration denied*, 14-1 BCA ¶ 35,483 (2013); *Michael W. Silva*, CBCA 1707-TRAV, 10-1 BCA ¶ 34,354. Payment of these expenses is mandatory. The employee is not required to return to the United States to be paid moving expenses. *Young*, 14-1 BCA at 174,415-16.

Although the Forest Service may be correct that Ms. Ellis-Smith could have obtained return benefits from the Defense Department after her resignation in February 2013, she cannot be required to do so under the circumstances presented here. Ms. Ellis-Smith was not a federal employee at the time she was hired by the Forest Service for the position in Ketchikan, Alaska. An individual who, like Ms. Ellis-Smith, returns to the Government after a break in service is by definition a new appointee. 41 CFR 302-3.1(b) (2014); *James A. Kester*, CBCA 4411-RELO, 15-1 BCA ¶ 35,966; *Michael C. Kostelnik*, CBCA 3483-RELO, 13 BCA ¶ 35,430. Although the Forest Service, after reviewing the matter, properly recognized that Ms. Ellis-Smith was a new appointee, rather than a transferee, its determination that the agency may only pay for Ms. Ellis-Smith's travel and transportation expenses from Fort Greely to Ketchikan is mistaken.

At the time the Forest Service hired Ms. Ellis-Smith, she was employed by a non-government entity and was residing in Bahrain. The travel orders issued by the agency authorized, among other things, Ms. Ellis-Smith's travel expenses, for herself and dependent daughter, and transportation of household goods, including the shipment of her personal vehicle, from Bahrain to Ketchikan, expenses which statute and regulation permit an agency to pay for new appointees. 5 U.S.C. § 5723; 41 CFR 302-3.2 (2013). It is a longstanding principle that competent travel orders generally may not be modified to expand or reduce an employee's reimbursable expenses once travel as been performed. As the Board has observed:

Legal rights and liabilities with regard to travel expenses vest when the travel is performed, and valid travel orders may not be revoked or modified retroactively so as to increase or decrease the rights that have become fixed after the travel has been performed. *Dana Riser*, GSBCA 14017-RELO, 98-1 BCA ¶ 29,417 (1997). Travel orders may be amended or revoked to correct an error on the face of the orders or if the orders clearly are in conflict with a law, regulation, or agency instruction.

Jeffrey E. Koontz, CBCA 3251-TRAV, 13 BCA ¶ 35,318, at 173,372; *accord, e.g., Tomila K. Hearon*, CBCA 3995-TRAV, 15-1 BCA ¶ 35,904 (2014); *Mustak Y. Keval*, CBCA 3349-RELO, 14-1 BCA ¶ 35,490; *Thelma H. Harris*, GSBCA 16303-RELO, 04-1 BCA ¶ 32,540 (2003); *Jeffrey D. Vance*, GSBCA 16016-RELO, 03-2 BCA ¶ 32,317.

The Forest Service had legal authority to issue the travel orders provided to claimant, who was considered to be a "new appointee" under the FTR. The only "error" identified by the agency is its realization, upon review of the matter, that Ms. Ellis-Smith was a resident of Fort Greely at the time she transferred to Wiesbaden in 2005.¹ Nothing in the record provided to the Board rebuts Ms. Ellis-Smith's assertion that her actual residence at the time she was hired by the Forest Service was in Bahrain. She has corroborated this statement by showing that at the time she was hired by the Forest Service, she had full-time employment in Bahrain, had left Government-subsidized housing and moved her belongings to another residence in Bahrain, and had extended her visa and work permit accordingly. Under the applicable statute and regulations, the agency issued valid travel orders for her move from Bahrain to Ketchikan to report for duty. The agency's conclusion, after the fact, that Ms. Ellis-Smith was eligible to be reimbursed by the Department of Defense for her travel and

¹ The agency was presumably aware of claimant's previous overseas employment with the Defense Department when it hired her, but did not raise the question of return travel rights prior to issuance of her travel orders.

transportation expenses to Fort Greely does not entitle it retroactively to require her to apply to the Defense Department to recover these expenses.

It is possible that Ms. Ellis-Smith might have been eligible to exercise her return rights with the Defense Department had she chosen to do so to return to the United States. We have no conclusive evidence in the record one way or the other.² The fact that she may have had this option does not obligate her to seek payment of the travel expenses for her return from her former employing agency, however. This is not unlike other circumstances in which employees have been eligible for relocation allowances from more than one source. In these cases, we have explained that the employee may elect to use either entitlement, but may not receive duplicate payments. *E.g.*, *Russell B. Roslewski*, CBCA 3731-RELO, 14-1 BCA ¶ 35,771; *Laurie Fenwood*, GSBICA 16805-RELO, 06-2 BCA ¶ 33,334. As we explained in *Roslewski*, it is the employee who has this option; the agency may not dictate which benefit is selected.

Decision

The claim is granted. Claimant is entitled to be reimbursed her travel and transportation expenses from Bahrain to Ketchikan, Alaska, as provided in the travel orders originally issued by the Forest Service.

CATHERINE B. HYATT
Board Judge

² Claimant suggests that the Defense Department would only have been responsible for her costs to move to the new location in Bahrain. Whether she was reimbursed for these costs, thus potentially extinguishing further return rights, is unclear.

