



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

September 28, 2016

CBCA 5352-TRAV

In the Matter of BIANCA MOEBIUS-CLUNE

Bianca Moebius-Clune, Washington, DC, Claimant.

Robin Kelley, Branch Chief, Financial Administrative Services, National Resources Conservation Service, Department of Agriculture, Tolland, CT, appearing for Department of Agriculture.

BEARDSLEY, Board Judge.

The Department of Agriculture (the agency) requested an advance decision from the Board pursuant to 31 U.S.C. § 3529 (2012) (Section 3529) and Board Rule 502(a) (48 CFR 6105.502(a) (2015)).

Factual Background

Ms. Bianca Moebius-Clune accepted a speaking invitation for a business-related meeting at a temporary duty location and asked if the agency would support travel for mothers who need or choose to bring their exclusively breast-fed babies and a care giver on a trip. The agency asked the Board to issue a Section 3529 decision on whether a nursing mother is considered to have a “special physical need” that requires reasonable accommodation as defined by the Federal Travel Regulation (FTR).¹

Prior to the issuance of a Section 3529 decision, Ms. Moebius-Clune traveled to her meeting by car, taking her child and care giver with her. Upon return from her trip, Ms. Moebius-Clune submitted a request for reimbursement for the travel by doing a comparison

¹ The relevant provision of the FTR is 41 CFR 301-13 (2015) (FTR 301-13).

between the cost for her, her child, and the child's care giver to travel by car to the meeting and the cost for her to travel alone by plane to the meeting. She submitted this reimbursement request and expected it to be approved by her supervisor. Despite the changed circumstances and given the expectation that Ms. Moebius-Clune and others will travel in the near future and raise the same question, the agency asked that the Board still issue a Section 3529 decision on the question posed initially.

Discussion

Section 3529 provides that:

- (a) A disbursing or certifying official or the head of an agency may request a decision from the Comptroller General on a question involving -
- (1) a payment the disbursing official or head of the agency will make; or
 - (2) a voucher presented to a certifying official for certification.

Section 204 of the General Accounting Office Act of 1996 transferred authority to issue a Section 3529 decision from the Comptroller General to the Director of the Office of Management and Budget and allowed the Director to delegate the authority to another agency. Pub. L. No. 104-316, 110 Stat. 3826 (1996). This authority was ultimately delegated to the Board. Consistent with this statute and delegation of authority, the Board's rules provide that we are authorized to issue a Section 3529 decision:

on a question involving a payment the disbursing official or head of agency will make, or a voucher presented to a certifying official for certification, which concerns the following type of claim made against the United States by a federal civilian employee:

- I. A claim for reimbursement of expenses incurred while on official temporary duty travel; and
- ii. A claim for reimbursement of expenses incurred in connection with relocation to a new duty station.

Board Rule 502(a). A request for a Section 3529 decision must "refer to a specific payment or voucher; it may not seek general legal advice." *Id.*

When an agency seeks a Section 3529 decision, there must be an actual employee claim for payment or reimbursement at issue. *Randal S. Kendrick, CBCA 4096-RELO, 14-1*

BCA ¶ 35,772, at 175,004 (citing *Vivian N. Rodriguez*, CBCA 3083-RELO, 13 BCA ¶ 35,208 (2012)). Absent an actual monetary claim, the Board lacks authority to consider the questions presented by the agency for decision because the statute only permits evaluation of issues arising from monetary claims. *Id.* (citing *John R. Durant*, GSBCA 15726-TRAV, 02-1 BCA ¶ 31,827). The Board's authority is limited by the authority set forth in the statute. *Id.*

The agency's request does not involve either type of claim contemplated by Section 3529. At the time the agency made the initial request, Ms. Moebius-Clune had not traveled to her meeting, and no claim for reimbursement had been made. Thus, there was no specific payment or voucher pending decision by the agency. Instead, the initial request sought general legal advice. Now there is a specific request for reimbursement, but the request is expected to be paid without the need to answer the question posed. Without an actual employee claim for payment or reimbursement at issue, the Board lacks authority to consider the question for decision.

Moreover, once the agency has made and issued a decision on the request for reimbursement, it generally "is inappropriate" for the agency to seek a Section 3529 decision. *Milton Brown*, CBCA 4998-RELO, 16-1 BCA ¶ 36,205, at 176,664 n.1 (citing *Andrew W. Frank*, GSBCA 16919-RELO, 06-2 BCA ¶ 33,364, at 165,403). The Board, however, can and will review that decision if the claimant requests review pursuant to Board Rule 402(a)(2).

The agency seeks guidance on a question in anticipation of future potential claims that may arise. The Board, however, lacks authority to issue an opinion on a question presented in the absence of an actual claim from an employee. Therefore, the Board declines to answer the question presented.

ERICA S. BEARDSLEY
Board Judge