



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

January 10, 2017

CBCA 5511-TRAV

In the Matter of KWOK HIN KO

Kwok Hin Ko, Columbia, MD, Claimant.

Marvin D. Rampey, Office of the General Counsel, Naval Surface Warfare Center, Department of the Navy, Port Hueneme, CA, appearing for Department of Defense.

CHADWICK, Board Judge.

Kwok Hin Ko, who was then a United States Navy engineer stationed in California, performed long-term temporary duty (LTTDY) for 180 days, from May to October 2015, at a Navy activity in Virginia. He was reimbursed for travel expenses he incurred in that period. After the 180 days expired, the Navy kept Mr. Ko in Virginia and did not send him back to his permanent duty station in California. In January 2016, Mr. Ko's California supervisors belatedly submitted paperwork to extend his LTTDY for another 180 days, through April 2016, but the responsible Navy office denied this request in March 2016. In May 2016, the Navy placed Mr. Ko on "long-term assignment" to the Virginia duty station, effective retroactively from May 2015 until May 2018. The memorandum documenting this assignment stated that Mr. Ko remained an employee of the California activity. Mr. Ko asks us to review "travel expenses not reimbursed" for the period for which the Navy did not approve LTTDY, from October 28, 2015, through April 30, 2016, as well as for a trip from Virginia to California in August 2016, which he says total \$27,956.25.

We lack authority to act. The Navy submitted evidence that Mr. Ko, who resigned his position in August 2016, belonged to a collective bargaining unit, and that the grievance procedure in the collective bargaining agreement (CBA) would provide his sole remedy for travel-related claims. *See Muniz v. United States*, 972 F.2d 1304, 1312 (Fed. Cir. 1992);

Kelly A. Williams, CBCA 2840-RELO, 12-2 BCA ¶ 35,116, at 172,437. The CBA between Mr. Ko’s employer, the Naval Surface Warfare Center, Port Hueneme (California) Division, and the Federal Union of Scientists and Engineers, Local R12-198, was signed in 1996 and was extended indefinitely by mutual agreement in 1999. The agreement covers “all employees of the employer,” with exceptions that Mr. Ko does not argue are relevant. The CBA’s grievance procedure covers “any matter relating to the employment of an employee,” with exclusions also not relevant here. Mr. Ko says “[n]o one ever told” him he belonged to the bargaining unit, but he does not deny that this was the case, nor does he challenge the Navy’s reading of the CBA. Although Mr. Ko has left the Navy, “it is the claimant’s status at the time the claim accrues that controls the availability of the grievance procedure.” *Aamodt v. United States*, 976 F.2d 691, 692 (Fed. Cir. 1992), *quoted in Tiffany M. Washington*, CBCA 4879-RELO (Aug. 29, 2016). Mr. Ko’s grievance rights were triggered by the travel-related events that occurred during his Navy employment.

Although Mr. Ko does not raise the argument, we add for completeness, and in light of the unusual facts presented, that, even assuming it is possible that Mr. Ko was constructively employed by the Virginia activity, and thus not covered by the California CBA, between the end of his authorized LTDDY in October 2015 and his retroactive “long-term assignment” to Virginia in May 2016, this argument would not aid his claim, as it would also imply that he was not on travel during that period.

Decision

The claim is dismissed for lack of authority.

KYLE CHADWICK
Board Judge