



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

May 19, 2017

CBCA 5685-TRAV

In the Matter of CHRISTOPHER J. ROSCOE

Christopher J. Roscoe, APO Area Europe, Claimant.

Yanir M. Hill, Assistant Deputy Chief of Staff, G1 (Civilian Personnel), United States Army, Europe, APO Area Europe, appearing for Department of the Army.

DANIELS, Board Judge (Chairman).

Should the Department of the Army reimburse employee Christopher J. Roscoe for the expenses he incurred for round-trip travel from his post in Germany to the United States, as if he had been on renewal agreement travel (RAT)? The employee and the agency disagree as to the answer to this question.

Mr. Roscoe had recently retired from military service and was living in Germany when the Army hired him in January 2015 for a position in that country. At that time, an employee in the agency's human resources center advised him that he was not eligible for RAT. In March 2016, acting under the belief that this advice was correct, Mr. Roscoe booked flights for his family, at their own expense, for round-trip travel to Corpus Christi, Texas, in October 2016. They later changed their itinerary, at additional cost, due to his medical needs, and the family flew to the Washington, D.C., area to join him in August 2016.

After Mr. Roscoe returned to Germany, a fellow employee who was also a military retiree suggested to him that he actually *was* eligible for RAT. Army officials confirmed that this information was correct: because of his credit for prior military service, he was eligible for RAT. *See* Joint Travel Regulations (JTR) 5836-E.2.a(1), 5838-A, 5840-C.7.b. By the time the officials recognized the original mistake, however, Mr. Roscoe's year of eligibility for RAT had ended.

Mr. Roscoe now asks that the Army reimburse him for the cost of the originally-scheduled trip, on the ground that the agency was legally obligated to pay him for RAT and would have done so, but for the bad advice its representative gave him when he was hired. The Army's position is that "[f]or the agency to reimburse him retroactively for travels that were undertaken without a prior approval and to seek reimbursement for such travel after-the-fact, would be tantamount to authorizing funds from the U.S. treasury for travels that were unrelated to his government employment."

We have held that –

[t]ravel orders may be amended retroactively in limited circumstances, including but not limited to when . . . the orders do not conform to applicable statutes and regulations, and . . . the facts and circumstances surrounding the issuance of an authorization clearly demonstrate that some provision which was previously determined and definitely intended to be included was omitted through error or inadvertence in preparing the authorization.

Peggy L. Clevenger, CBCA 3854-RELO, 14-1 BCA ¶ 35,796; *see also Brian P. Byrnes*, GSBGA 14195-TRAV, et al., 98-1 BCA ¶ 29,535.

We think that the principle regarding retroactive amendment should apply, as well, to situations in which a failure to issue orders was due to the same sorts of limited causes. Here, both of the circumstances noted above were present. Regulation mandates that the Government pay RAT expenses for eligible employees. 41 CFR 302-3.101 (tbl. E), 302-3.514 (2015); JTR 7065-E; *see also* JTR 7065-F (RAT may be denied only in certain circumstances, none of which are applicable here). And the agency would have advised Mr. Roscoe of his eligibility for RAT, but for the mistaken position taken by someone in the human resources center at the time of the employee's hiring. Paying for the family's 2016 travel now would therefore do no more than grant the employee a benefit to which he is entitled and which he was not given at the time of travel due to agency error.

The amount of payment remains in doubt, however. An eligible employee and his dependents are authorized transportation from the employee's post of duty outside the continental United States (OCONUS) to the employee's actual residence at the time of assignment to the OCONUS post. JTR 7065-E.1. The travel may also be to an alternate destination, but if it is, reimbursement is limited to the cost of round-trip travel to the residence at the time of assignment. *Id.* 7065-N. Mr. Roscoe tells us now that his "home of record (since [he] entered the Army 30 years ago) [is] in Kingsville, Texas," near Corpus Christi. When he signed his service agreement preparatory to assuming his civilian service position in Germany, however, he said that his home of record was College Station, Texas,

near Houston. The Army should pay the cost of the family's round-trip travel, limited to the cost to fly by the most direct route to Corpus Christi or Houston, whichever is the home of record, plus ground transportation costs to the appropriate nearby town.

STEPHEN M. DANIELS
Board Judge