



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

May 12, 2017

CBCA 5550-TRAV

In the Matter of CHRISTOPHER ROSE

Christopher Rose, Florida, NY, Claimant.

Timothy Bailey, Supervisory Financial Operations Specialist, Payment and Travel Management Team, Accounting Operations Center, National Park Service, Department of the Interior, Herndon, VA, appearing for Department of the Interior.

O'ROURKE, Board Judge.

In 2016, Christopher Rose, an employee of the National Park Service (NPS or agency), was selected for a position as an exhibits specialist in Auburn, New York. Prior to assuming his new position, Mr. Rose worked as a preservationist for the NPS in Hyde Park, New York, which is 238 miles southeast of Auburn. Mr. Rose's residence was in Florida, New York, which is located between the two duty stations—100 miles north of Hyde Park and 142 miles east of Auburn. Several official documents substantiate an effective date of employment of May 1, 2016, for the new position in Auburn. However, Mr. Rose did not physically report to Auburn until July 2016.

Between May and July, Mr. Rose worked in Hyde Park, New York, and Springfield, Massachusetts, performing various tasks related to his new position.¹ Mr. Rose was reimbursed for temporary duty (TDY) performed in Springfield from June 5 to July 24, 2016. He is currently seeking reimbursement for his daily commute to Hyde Park, and per diem for meals and incidentals, for the period of May 3 through June 4, 2016.²

¹ According to the agency, the work that Mr. Rose performed during this time was substantially different from his previous work as a preservationist at Hyde Park.

² The agency considered Mr. Rose's written request for reimbursement as his claim, as a travel authorization was never generated.

The agency requested an advance decision under 31 U.S.C. § 3529 (2012) regarding whether or not Mr. Rose is entitled to travel allowances for that time period. According to a statement provided by the agency, “On or around May 3, 2016, Mr. Rose was contacted by his supervisor and was directed to remain at Hyde Park, as he was being ‘loaned’ to Hyde Park, NY to perform services under his new position.”³ The agency noted that while “on loan,” Mr. Rose continued to reside at his residence and commuted on a daily basis to Hyde Park until June 5, 2016, when he departed for Springfield, Massachusetts. He remained in Springfield until July 24, 2016, at which time he departed for Auburn, New York—his new, permanent duty location.

Documentation provided by the agency included a copy of Mr. Rose’s Standard Form (SF) 50;⁴ the agency’s offer letter to Mr. Rose; his Official Change of Duty Station orders; a travel authorization for his TDY to Springfield; a statement from his supervisor; and electronic mail (email) messages between Mr. Rose and agency personnel. Mr. Rose’s SF-50 reflects a position approval date of April 13, 2016, and an effective date of May 1, 2016. Block 5B of the form describes the nature of the personnel action as “CONV to TERM APPT NTE 5-31-2017.”⁵ Blocks 14 and 22 list the same name and location for the parent organization of both the old position and the new position: “Northeastern Region, NER HACE, Boston, Massachusetts.” In the remarks section of the SF-50 (block 45) it states, “Appointment is subject to completion of one year trial period beginning 05/01/16.” The offer letter, which is dated April 13, 2016, directed Mr. Rose to report to work in Auburn on May 2, 2016. The letter also indicated that his “entry on duty date” was May 1, 2016.

Although Mr. Rose did not physically arrive at his new duty station until July 2016, his change of station orders reflect an issue date of September 12, 2016. In the “General Information” section of his orders it states, “Your official change of duty station entitlement may be incurred beginning on or about 05/01/2016 to 04/30/2017.” The “Purpose and Remarks” section of his orders lists 09/09/2016 as the date that his employment agreement was signed, which obligates him to serve a minimum of twelve months in the new position. That section also informs the employee, “The purpose of this authorization is to transfer you to your new duty station. You are hereby directed to proceed from HYDE PARK, NY (NERO) to AUBURN, NY (NERO), *the latter place will become your official station upon arrival.*” (Emphasis added) Mr. Rose’s travel authorization for his TDY to Springfield, dated

³ In documentation provided to the Board, the agency explained that Mr. Rose’s supervisor was the same person for both his new position and his previous position as a preservationist in Hyde Park.

⁴ The SF 50, entitled “Notification of Personnel Action,” is used to document federal employment events and is generally used as the long-term Official Personnel Folder documentation of personnel actions.

⁵ Conversion to Term Appointment, Not To Exceed 13 months or May 31, 2017.

June 9, 2016, identifies Hyde Park as his duty station and lists an office address on Albany Road in Hyde Park.

Discussion

The authority to decide questions involving payment of travel and relocation expenses under 31 USC §3529 was delegated to the Board from the Administrator of the General Services Administration. Board Rule 502 governs agency requests for advance decisions on travel claims made by federal employees for expenses incurred while performing temporary duties. 48 CFR 6105.502 (2015). Paragraph (a)(2) of the rule states, “A request for a Section 3529 decision shall be in writing; no particular form is required. The request must refer to a specific payment or voucher; it may not seek general legal advice.” Both the agency and the affected employee may submit information relevant to the claim for the Board’s consideration.

Mr. Rose’s entitlement to the travel allowances he seeks for work performed at Hyde Park from May 3 until June 4, 2016 turns on whether he was in a temporary or permanent duty status during that time. It is well established that “[w]hether assignment to a particular station is temporary or permanent is a question of fact to be determined from the orders directing the assignment, the duration of the assignment, and the nature of the duties performed.” *Susan M. Spillman*, CBCA 1619-TRAV, 10-1 BCA ¶ 34,371, at 169,725 (citing *Frank A. Conforti*, CBCA 828-TRAV, 07-2 BCA ¶ 33,693, at 166,786; *Rodney C. Lowe*, GSBCA 13850-RELO, 97-1 BCA ¶ 28,962, at 144,246). In this case, during the time period at issue, neither TDY orders nor official change of station orders had been issued to Mr. Rose. Although his SF- 50 and the offer letter indicate an effective date and entry on duty date of May 1, 2016, for the new position, those documents are not controlling here. In previous decisions, we have found that agency records are not conclusive proof of an employee’s permanent duty station. *James D. Fenwood*, GSBCA 15104-RELO, 00-1 BCA ¶ 30,658 (1999). The Federal Travel Regulation (FTR) defines “official [duty] station” as “the location where the employee regularly performs his or her duties.” FTR 300-3.1 (41 CFR 300-3.1 (2015)). The FTR also defines the effective date of transfer as “the date on which you report for duty at your new or first official station.” FTR 302-2.4. Mr. Rose’s travel orders are consistent with this notion, as they indicate that Auburn would become his official station upon arrival.

The Comptroller General previously addressed the issue of whether the effective date of a new assignment, as annotated on an employee’s SF-50, is controlling. In *Robert A. Motes*, B-210953 (Apr. 22, 1983), the Comptroller General rejected the date indicated on the SF-50 as indicative of a transfer. In that case, the employee reported for duty at his new duty station on September 22, 1982, eight days prior to the effective date of his new position as listed on his SF-50. The employee’s claim for miscellaneous expense allowance was denied because it was based on a rate which became effective on or after October 1, 1982. The employee’s contention that the effective date of October 1, 1982, on his SF-50 should

control was rejected by the Comptroller General in light of the FTR's "unambiguous" definition of the effective transfer date. Furthermore, the Comptroller General specifically disregarded the date on the employee's SF-50 as "not determinative."

In *Wanda A. Sherman*, B-203371, (Feb. 9, 1982), Ms. Sherman, an IRS employee, was required to attend training at her old duty station in Dallas, Texas prior to reporting to her new duty station in Little Rock, Arkansas. The training lasted approximately one month. She remained in her apartment in Dallas for the duration of the training. She did not report to Little Rock until after the training concluded. Her claim for subsistence expenses during the training period at her old duty station was denied under the FTR on the basis that she did not "physically change posts of duty and could not be paid per diem or actual subsistence expenses while in Dallas, her then permanent duty station . . . An employee must actually report for duty at his new duty station before it is regarded as his permanent duty station so as to entitle him to per diem while on duty at the former duty station." This is similar to the instant case, where Mr. Rose remained at Hyde Park to perform work under his new position and did not arrive at his new duty station until July 24, 2016. The critical date here is the reporting date. Only when Mr. Rose physically reported to Auburn was he effectively transferred to Auburn.

While there are regulations and cases that support the notion that a TDY location can become a permanent duty station, none support Mr. Rose's contention that his permanent duty station became his TDY location. See *Denny C. Eckenrode*, B-194082 (May 8, 1979). Decisions that allowed members to earn per diem for performing temporary duty at locations near their former permanent duty stations, while continuing to reside in their homes, were found to be officially "detached" from their former duty stations and performing temporary duty *en route* to their new permanent duty locations. See *Lieutenant Colonel I. L. Ray*, B-170964 (Apr. 14, 1971). In such cases, official orders were issued reflecting those facts. In the instant case, no such orders were issued for the period of May 3 through June 4, 2016. TDY orders *were* issued for the trip to Springfield, and those orders clearly indicate that Mr. Rose's official duty station as of June 9, 2016 was Hyde Park, and remained so until he reported for duty in Auburn on July 24, 2016.

Even if the agency is unhappy with its handling of Mr. Rose's official change of station—and some agency officials support Mr. Rose's claim—they do not have the authority to waive regulations issued pursuant to statutory direction, which have the force and effect of law and must be followed. *Alphonso S. Hamilton*, CBCA 5109-RELO, 16-1 BCA ¶ 36,441, at 177,607 (citing *Stephen F. Fischer*, CBCA 875-RELO, 08-1 BCA ¶ 33,771 at 167,162). An agency cannot pay travel allowances when none were—or could be—authorized. *Erwin E. Drossel*, B-203009 (May 17, 1982).

The record contains sufficient evidence to show that Hyde Park was Mr. Rose's permanent, official duty station during the period of time for which he seeks reimbursement of travel allowances. In light of the long-standing rule that an employee is not entitled to

TDY benefits when he is performing work at his permanent duty station, we find that under the circumstances, Mr. Rose is not entitled to travel benefits for the period of May 3 through June 4, 2016. FTR 301-11.1. *Craig A. Bergquist*, CBCA 2799-TRAV, 13-1 BCA ¶ 35,202, at 177,709 (2012).

Decision

Mr. Rose's request should be denied.

KATHLEEN J. O'ROURKE
Board Judge