



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

April 3, 2018

CBCA 5983-RELO

In the Matter of RICHARD K. GUFFEY

Richard K. Guffey, Woodbridge, VA, Claimant.

Ilona M. Keller, Human Resources Specialist, Civilian Personnel Directorate, Department of the Army, APO Area Europe, appearing for Department of the Army.

LESTER, Board Judge.

When claimant, Richard K. Guffey, was hired for a federal position with the United States European Command (USEUCOM), he received written travel orders indicating that he was entitled to reimbursement of temporary quarters subsistence expenses (TQSE) when moving from his then-residence in Colorado to his new permanent duty station in Washington, D.C. After Mr. Guffey had incurred those expenses, the agency reversed its position and denied his request for TQSE reimbursement. Because statute and regulation bar new appointees from receiving TQSE reimbursement, we have no choice but to deny Mr. Guffey's claim.

Background

Mr. Guffey was employed by USEUCOM in Stuttgart, Germany, when, effective June 30, 2016, he requested for personal reasons a curtailment of his overseas tour. USEUCOM granted his request. Mr. Guffey returned to Colorado Springs, Colorado, at the end of his federal service.

Subsequently, Mr. Guffey applied for, was selected for, and was appointed to a civilian position with USEUCOM, with a duty station at the Pentagon in Washington, D.C.

He was initially provided a provisional appointment, effective May 30, 2017, which was converted to a career appointment effective August 20, 2017.

On the DD1614 travel order that the agency provided to him as part of the hiring process for the position at the Pentagon, the agency authorized reimbursement to Mr. Guffey of travel costs pursuant to his permanent change of station (PCS) from Colorado Springs, his actual place of residence when he was rehired, under the heading “first duty station travel.” In block 14a of the DD1614 travel order, the agency purported to authorize Mr. Guffey reimbursement of TQSE, which, pursuant to block 28 of the travel order, would start on “the day the employee arrives in Washington, D.C. [not to exceed] 60 days.” Mr. Guffey, relying on the authorizations in his travel order, incurred hotel and meal expenses, all within the applicable per diem, for the first few weeks after his arrival at his new duty station.

When Mr. Guffey submitted his claim for reimbursement in the amount of \$5107.72, the Defense Finance and Accounting Service (DFAS) rejected his claim, stating that, as a new appointee into federal civilian service, he was not eligible for TQSE. Mr. Guffey’s request for higher-level review was denied, and Mr. Guffey submitted his claim to the Board.

Discussion

USEUCOM, when rehiring Mr. Guffey in 2017, told him that it would reimburse the travel costs that he incurred, including TQSE, in moving from his home in Colorado to his new duty station in Washington, D.C. Mr. Guffey relied upon USEUCOM’s representation, which was unambiguously set forth in written travel orders, when he decided to accept the job, and he incurred significant costs in reliance upon it.

USEUCOM had no authority to make such a promise. Federal Travel Regulation (FTR) 302-3.2 (41 CFR 302-3.2 (2017)), which implements the statutory entitlements set forth in 5 U.S.C. §§ 5722, 5278 (2012), lists those relocation expenses that an agency may provide to a new appointee, and FTR 302-3.3 provides that the “agency will not pay for expenses that are not listed.” 41 CFR 302-3.3. Because TQSE is not expressly listed as a recoverable expense in FTR 302-3.2, it is “specifically not allowable.” *Wendy Castineira*, GSBICA 15092-RELO, 00-1 BCA ¶ 30,740, at 151,871 (1999). That preclusion is even more directly addressed in another part of the FTR, which explicitly states that “[n]ew appointees . . . are not eligible for a TQSE allowance,” 41 CFR 302-6.5, and in Joint Travel Regulations (JTR) 5778-C.1, which similarly states that “TQSE is not authorized for [a] . . . [n]ew appointee assigned to a first PDS.”

The fact that Mr. Guffey was previously employed by USEUCOM and was returning to federal service does not change his status as a “new appointee.” The FTR defines a “new

appointee” as including “[a]n employee who is returning to the Government after a break in service.” 41 CFR 302-3.1(b). The FTR makes an exception in limited circumstances for employees who depart federal service but are re-employed in federal service within one year. *See id.* That exemption is limited, however, to situations in which the employee departed federal service because of a reduction in force (RIF) or a transfer of the employee’s job functions. *Id.* Mr. Guffey did not depart his position in Stuttgart because of a RIF or transfer of functions. Accordingly, even though Mr. Guffey was rehired by USEUCOM within a year after ending his employment in Stuttgart, we must treat him as a “new appointee” for purposes of the availability of relocation benefits, including TQSE. *Evester Edd*, CBCA 1582-RELO, 09-2 BCA ¶ 34,232, at 169,193-94.

The circumstances here mirror those in *Justin M. Kearns*, CBCA 2842-RELO, 12-2 BCA ¶ 35,065, in which an agency hired a new appointee and told him that he would be reimbursed for various relocation costs, including TQSE, if he accepted the agency’s offer of employment. In reliance on that representation, the claimant accepted the agency’s offer and relocated for the new job. Thirty days after the new appointee entered duty, though, the agency notified him that TQSE reimbursement was available only to employees transferring from an existing federal position, rendering its prior representations erroneous. Even though the claimant indicated that he likely would not have accepted the job offer without the promise of TQSE reimbursement, the Board recognized that the applicable regulations preclude agencies from providing TQSE to new appointees, meaning that the agency’s promise to the contrary was unenforceable:

New appointees cannot receive reimbursement for costs to which they are not entitled by law or regulation. *Roscoe C. Howard, Jr.*, GSBCA 16181-RELO, 04-1 BCA ¶ 32,435 (2003). The [FTR] explicitly states that new appointees are not eligible to receive TQSE . . . when they relocate to begin federal employment. 40 CFR 302-6.5, -11.4 (2010).

This Board has held that it is settled that new employees are entitled to limited benefits that do not include reimbursement of TQSE *William Arnold Kristapovich*, CBCA 2390-RELO, 11-2 BCA ¶ 34,826.

Justin M. Kearns, 12-2 BCA at 172,239; *see Terry L. Cline*, CBCA 861-RELO, 08-1 BCA ¶ 33,736, at 167,031-32 (2007) (denying TQSE to new appointee, even though travel orders stated entitlement to it).

Although Mr. Guffey relied upon USEUCOM’s representations to his detriment, it is well-settled that “travel orders which erroneously authorize relocation expenses to which a new employee is not entitled cannot create a right to reimbursement in excess of the

statutory and regulatory entitlements.” *Richard G. Bebout*, CBCA 987-RELO, 08-1 BCA ¶ 33,814, at 167,391. “This is true regardless of whether the employee relied to his or her detriment on the erroneous orders.” *Id.*; see *George S. Page*, GSBCA 15114-RELO, 00-1 BCA ¶ 30,707, at 151,696 (1999) (“the law prevents the agency from honoring commitments made in its name by officials who do not have the power to make them”). We cannot order payment of a relocation expense that is contrary to statute or regulation. *Charles M. Russell*, GSBCA 16000-RELO, 03-1 BCA ¶ 32,176, at 159,079.

Regrettably, Mr. Guffey’s situation is not unique. We and our predecessor board have on numerous occasions reviewed claims by new appointees whose agencies (including those overseen by DFAS) had incorrectly issued written travel orders purporting to authorize TQSE. See, e.g., *Richard G. Bebout*, 08-1 BCA at 167,391; *David W. Brown*, GSBCA 16721-RELO, 06-1 BCA ¶ 33,147, at 164,267 (2005); *Opher Heymann*, GSBCA 16687-RELO, 05-2 BCA ¶ 33,104, at 164,079. In denying reimbursement in prior instances, our predecessor board “encourage[d] agencies to ensure that their travel and transportation officials provide accurate advice to new appointees as to the proper scope of their first hire relocation benefits, and ensure that travel authorizations are properly prepared so that this situation does not occur.” *Opher Heymann*, 05-2 BCA at 164,079, quoted in *David W. Brown*, 06-1 BCA at 164,267. We once again reiterate those thoughts.

Decision

We deny Mr. Guffey’s claim.

Harold D. Lester, Jr.
HAROLD D. LESTER, JR.
Board Judge