



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

April 26, 2019

CBCA 6354-RELO

In the Matter of REBECCA J. LOTT

Rebecca J. Lott, Port Republic, MD, Claimant.

Alison Gray, Associate General Counsel, Office of Civilian Human Resources, Department of the Navy, Washington Navy Yard, Washington, DC, and Michael J. McCormick, Senior Associate Counsel, Office of Counsel, Commander Navy Region Europe, Africa, Southwest Asia, Department of the Navy, FPO Area Europe, appearing for Department of the Navy.

LESTER, Board Judge.

Claimant, Rebecca J. Lott, complains that the Department of the Navy (Navy) did not provide her with a miscellaneous expense allowance (MEA) when she returned from a position within the Office of Naval Global Research (ONGR) in London, United Kingdom, to one at Headquarters, Naval Air Systems Command (NAVAIR), in Patuxent River, Maryland. For the reasons set forth below, we grant her claim.

Background

In August 2015, Ms. Lott was reassigned from a position with NAVAIR in Patuxent River to ONGR in London pursuant to the civilian career employee rotation program authorized by 10 U.S.C. § 1586 (2012). In a transportation agreement that she executed prior to and as part of that reassignment, Ms. Lott agreed to serve for at least twelve months at her duty station outside the continental United States (OCONUS) (or thirty-six months were she to separate from federal service at the end of her OCONUS tour). By statute, she was

entitled at the successful conclusion of her ONGR assignment to return to a position at Patuxent River without reduction in the seniority, status, and tenure that she held immediately prior to her assignment to duty outside the United States. *See id.* § 1586(c). As part of her 2015 reassignment, the human resources office (HRO) for ONGR authorized various expense allowances, including a relocation income tax allowance (RITA) and MEA associated with the relocation from Patuxent River to London.¹

Effective November 25, 2018, after satisfying her tour-of-duty requirements, Ms. Lott exercised her statutory return rights to a position at her previous NAVAIR command. Prior to and as part of that exercise, ONGR's HRO issued travel orders in May 2018 that authorized various expenses for Ms. Lott's return reassignment, including the cost of travel between London and Patuxent River, per diem, household goods (HHG) shipment, and temporary HHG storage. The travel orders did not include temporary quarters subsistence expenses (TQSE), RITA, or MEA, but indicated that NAVAIR, as the gaining command, "is authorized to amend these orders . . . with the concurrence of the losing activity" and that, pursuant to the Joint Travel Regulations (JTR), ONGR, as the losing activity, "is responsible [only] for the employee and dependents['] transportation costs . . . to the employee's actual place of residence, or new duty station." When issuing the travel orders, ONGR's HRO separately notified NAVAIR that Ms. Lott was requesting thirty days of TQSE and asked whether NAVAIR, as the gaining activity, was authorizing TQSE and other expenses, including RITA and MEA, so that those could be added to her travel orders. On June 28, 2018, NAVAIR informed the ONGR HRO that NAVAIR was not authorizing such expenses.

On January 16, 2019, after returning to Patuxent River, Ms. Lott submitted a claim to the Board, challenging the Navy's decision not to grant her RITA or MEA.² The next day,

¹ In an effort to distinguish Ms. Lott's 2015 transfer from her 2018 transfer, the Navy has argued that ONGR must have granted MEA in 2015 as a component of the foreign transfer allowance (FTA) under the Department of State Standardized Regulations (DSSR), rather than an entitlement under the Federal Travel Regulation (FTR), as set forth at table B of 41 CFR 302-3.101 (FTR 302-3.101). In support, it argues that Joint Travel Regulations (JTR) 05101 renders "[a] civilian employee . . . on first duty station travel to a foreign area duty location" OCONUS ineligible for MEA under the FTR. The cited JTR provision applies to new civilian employees heading to their first duty post, not to long-time employees like Ms. Lott, who in 2015 was heading to her *fourth* OCONUS duty post with the Navy. The MEA and other benefits that ONGR authorized in 2015 were plainly consistent with table B of FTR 302-3.101. JTR 05101 was irrelevant to Ms. Lott's situation.

² Ms. Lott has not questioned the Navy's denial of TQSE, so we do not consider it here.

the Navy changed its position regarding Ms. Lott's entitlement to RITA and amended her travel orders to provide that benefit. Accordingly, only the MEA claim is now before us.

Decision

“The purpose of the [MEA] is to defray various contingent costs associated with discontinuing a residence at one location and establishing a residence at a new location” that are not expressly covered by other allowances that a relocating employee might receive. 76 Fed. Reg. 31,110, 31,110 (June 16, 2011). These costs may include “items such as fees for disconnecting and connecting appliances, cutting and fitting rugs, draperies, and curtains moved from one residence to another, utility fees or deposits that are not offset by eventual refunds, forfeiture of medical, dental, and other non-transferrable contracts, and the cost of automobile registration and driver's licenses.” *Id.* If an eligible employee traveling without family members does not want to document specific incurred MEA expenses, he or she can elect to take a lump sum MEA payment of “[e]ither \$650 or the equivalent of one week's basic gross pay, whichever is the lesser amount.” 41 CFR 302-16.102(a) (2018).

The statutory authority for MEA is set forth at 5 U.S.C. § 5724a(f), which provides, in relevant part, that, under applicable regulations and subject to maximum payment limits, an employee who is reimbursed for travel and transportation expenses under sections 5724(a) or 5724a(a)-(e) of title 5 of the United States Code is also entitled to MEA. *See Charles J. Wright*, CBCA 4799-RELO, 15-1 BCA ¶ 36,138, at 176,385 (“Statute provides that when an employee transfers in the interest of the Government, the agency to which that employee transfers shall . . . reimburse or pay . . . MEA.”). Part 302-16 of the Federal Travel Regulation (FTR) implements that statutory provision, establishing that an employee is eligible for MEA if (1) his or her agency authorized or approved relocation, (2) the employee discontinued and established a residence in connection with the relocation, (3) the employee meets the eligibility conditions set forth in FTR part 302-1, and (4) the employee signed the required service agreement in FTR part 302-1. 41 CFR 302-16.3. If an employee is otherwise eligible for MEA, payment is “mandatory and cannot be waived at the agency's discretion.” *Fred H. Carley*, B-181627 (Aug. 27, 1976); *see* 55 Comp. Gen. 613, 614 (1976) (agency's attempt to deny approval of MEA would be “ineffective” because “departments and agencies have no discretion to reduce or change benefits otherwise provided by regulation”); 41 CFR 302-16.4 (“[I]f you meet the applicable eligibility conditions in [FTR] § 302-16.3, your agency must authorize payment of a MEA.”).

Ms. Lott meets the eligibility conditions for payment of MEA. The Navy authorized Ms. Lott's transfer from Patuxent River to London, as well as her return to a position at Patuxent River without reduction in the seniority, status, and tenure that she held immediately prior to her assignment to duty outside the United States, as required by 10 U.S.C. § 1586(c).

Upon the conclusion of her ONGR tour, she discontinued a residence in London and reestablished one in the Patuxent River area.³ Because FTR 302-1.1(b) permits relocation expense allowances for “[a]n employee transferring in the interest of the Government from one agency or duty station to another for permanent duty” whose “new duty station is at least 50 miles from [the employee’s] old duty station,” Ms. Lott satisfies the eligibility condition of FTR part 302-1. And Ms. Lott completed her service obligations under a signed service agreement with the Navy that provided for return relocation benefits. Having satisfied these requirements, she is entitled to MEA and can elect, as she has, to receive a \$650 MEA payment without documenting specific MEA expenses. 41 CFR 302-16.4, -16.102(a).

The Navy acknowledges an employee in Ms. Lott’s position is entitled to MEA both “(1) upon arrival overseas, and (2) upon arrival back in the United States at tour end,” but *only* “if the employee satisfies the requirements at each juncture—foremost of which is that the expense *must be authorized* by the appropriate entity.” Respondent’s Brief at 5. The agency indicates that MEA authorization is separate and distinct from the more general authorization of relocation expense reimbursements. Yet, the FTR makes clear that, once an agency decides to pay or reimburse a transferring employee’s relocation expenses, the agency cannot pick-and-choose which mandatory allowances associated with that transfer it will elect to fund:

§ 302-3.101 As a transferred employee what relocation allowances must my agency pay or reimburse me for incident to a permanent change of station?

As a transferred employee there are mandatory and discretionary relocation expenses. *Once an agency decision is made to pay or reimburse relocation expenses indicated for the type of transfer in tables (A) through (I) of this section, all the mandatory allowance[s] must be paid or reimbursed, unless otherwise stated in the applicable parts.*

³ To the extent that the Navy is questioning whether an employee who returns to her original continental United States (CONUS) duty post from an OCONUS location is establishing a new CONUS residence for purposes of MEA entitlement, she is, even if she moves back into the home in which she lived prior to moving OCONUS. *See Deward W. Moore—Transfer—Miscellaneous Expenses*, B-187875 (May 31, 1977) (“When [the employee] was transferred back to Johnstown, [he] was again entitled to miscellaneous expenses . . . , as he discontinued the residence in Clearfield and returned to his former residence in Johnstown. The fact that [the employee] returned to his former residence did not [a]ffect his eligibility.”).

41 CFR 302-3.101 (emphasis added). Table C within FTR 302-3.101 lists various expenses, including MEA, as mandatory allowances for transfers from an OCONUS PDS to a continental United States (CONUS) PDS. Here, once ONGR, the losing activity, authorized reimbursement of transportation costs, employee per diem, and HHG transport and temporary storage for Ms. Lott's transfer (consistent with her service agreement), Ms. Lott became entitled to all mandatory allowances associated with an OCONUS to CONUS PDS transfer, including MEA.

The Navy, through a brief prepared and filed by NAVAIR, the gaining activity, argues that ONGR, the losing activity, could only obligate the Navy to pay those relocation expense reimbursements that the losing activity itself will fund. According to NAVAIR, JTR 054804 splits and allocates the burden of paying relocation costs between agency offices affected by an employee's relocation: the OCONUS losing activity (here, ONGR) pays the transportation costs of the relocating civilian employee and his or her dependents, the employee's per diem, HHG transportation, and OCONUS POV transportation, while the CONUS gaining activity (here, NAVAIR) pays "dependent per diem, MEA, and TQSE, if authorized." Although ONGR authorized Ms. Lott travel and transportation costs, HHG storage and transport, and employee per diem for her Patuxent River return, "[t]hat action by the losing command," argues the Navy, "cannot trigger a financial responsibility by the gaining command [to pay MEA] without the gaining command's authorization," leaving the determination of whether the relocating employee receives MEA wholly at the gaining activity's discretion. Respondent Brief at 10-11.

We must reject the Navy's argument. Whether holding a position within ONGR or NAVAIR, Ms. Lott ultimately is an employee of the Navy, and the Navy cannot use the JTR to split itself into unrelated individualized entities or to make mandatory entitlements discretionary. Consistent with statute, the FTR makes clear that, once an employee meets the applicable eligibility conditions in FTR 302-16.4, as Ms. Lott has done here, that employee is entitled to MEA. The FTR is a "legislative rule" of "controlling weight," *Kevin D. Reynolds*, CBCA 2201-RELO, 11-1 BCA ¶ 34,756, at 171,061, and any JTR provision (or interpretation of a JTR provision) that conflicts with the FTR is invalid "because the JTR 'does not have the force of law and cannot alter an FTR determination.'" *Scott M. Torrice*, CBCA 2431-TRAV, 11-2 BCA ¶ 34,839, at 171,386 (quoting *Frank J. Salber*, GSBCA 16836-RELO, 06-2 BCA ¶ 33,330, at 165,286). While the Navy can internally debate which Navy office should pay Ms. Lott's MEA, Ms. Lott is ultimately entitled to her MEA payment no matter the result of that debate. See *Tejbir Singh*, GSBCA 15830-RELO, 02-2 BCA ¶ 31,924, at 157,730 (JTR provision explaining which employee expenses will be reimbursed

by gaining activity and which by losing activity “has no bearing on [the employee’s] eligibility to be reimbursed.”)⁴

Decision

Ms. Lott’s claim is granted. The Navy shall pay Ms. Lott MEA of \$650.

Harold D. Lester, Jr.

HAROLD D. LESTER, JR.

Board Judge

⁴ NAVAIR asks that, if we find entitlement, we further find that ONGR, as the losing activity, is responsible for paying Ms. Lott’s MEA. We decline to decide that issue. NAVAIR raises an intra-agency issue that the Navy itself is capable of resolving internally, although we encourage the gaining activity to pay Ms. Lott now, subject to reimbursement from the losing activity depending on the results of the Navy’s internal discussions, so that Ms. Lott is not held hostage while the debate continues. Even if we could consider this type of intra-agency issue, ONGR has not informed us whether it disagrees with NAVAIR’s argument that ONGR should pay Ms. Lott’s MEA, leaving it unclear whether there is any dispute for us to resolve.