



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

February 11, 2022

CBCA 7263-RELO

In the Matter of VERA A.

Vera A., Claimant.

Kirsten R. Lefebure, Office of the Chief Counsel, Bureau of the Fiscal Service, Department of the Treasury, Parkersburg, WV, appearing for Department of the Treasury.

SULLIVAN, Board Judge.

On behalf of the Department of Housing and Urban Development (HUD), the Department of the Treasury, Bureau of the Fiscal Service (agency or Fiscal Service) has requested an advance decision from the Board pursuant to 31 U.S.C. § 3529 (2018) and Board Rule 502(a) (48 CFR 6105.502(a) (2020)). The agency asserts that an employee had been improperly reimbursed per diem expenses for a house-hunting trip and temporary quarters subsistence expenses (TQSE) based upon a belief that the employee did not intend to permanently relocate when those expenses were incurred. The agency requested advice as to which factors the agency should consider before proceeding with a debt collection action for the paid reimbursement. The Board declines to consider the agency's request for an advance decision in the circumstances here.

Background

In 2015, claimant relocated from Indiana to Illinois under permanent change of station orders. The agency advanced funds to claimant for a house-hunting trip and TQSE. After reporting to duty in Illinois, claimant shared an apartment with a co-worker and retained a home in Indiana. The employee worked in Illinois for twelve months, as required by the service agreement that the employee signed. Subsequently, HUD concluded that claimant had not occupied temporary quarters when claimant first moved to Illinois and had not

intended to permanently relocate. HUD has not yet decided whether to make a demand for repayment of the relocation expenses.

Discussion

Fiscal Service, on behalf of HUD, requests “an advance decision and advisory opinion on factors the agency should consider before proceeding with a debt collection of certain relocation expenses that were paid to an employee who did not permanently relocate to her new duty station.”¹

The Board has the authority to decide claims for employee travel and relocation expenses under two different statutes. *Randal S. Kendrick*, CBCA 4096-RELO, 14-1 BCA ¶ 35,772. First, under 31 U.S.C. § 3702(a)(3), the Board can review a claim submitted by an employee, or by an agency on behalf of an employee, challenging the agency’s determination as to what expenses or reimbursement an employee is entitled. *Id.*; Board Rule 401. Second, pursuant to 31 U.S.C. § 3529 (section 3529), an agency can request an advance decision from the Board “on a question involving . . . (1) a payment the disbursing official or head of the agency will make; or (2) a voucher presented to a certifying official for certification.” *Id.* § 3529(a); *see Use of Appropriated Funds to Purchase Light Refreshments at Conferences*, B-288266 (Jan. 27, 2003) (section 3529 statutory authority essentially allows for resolution of “questions about the legality of payments disbursing officers or heads of agencies may make, or the legality of expenditures covered by vouchers presented to certifying officers for certification”).

The agency’s request for an advance decision here falls under section 3529. Board Rule 502 defines how we have elected to implement our section 3529 authority:

[A]n agency . . . may request from the Board a decision (referred to as a “Section 3529 decision”) on a question involving a payment the disbursing official or head of agency will make, or a voucher presented to a certifying official for certification, which concerns the following type of claim made against the United States by a federal civilian employee:

(i) A claim for reimbursement of expenses incurred while on official temporary duty travel; and

¹ The Board is not the hearing official for the agency for actions taken pursuant to the Debt Collection Act, 5 U.S.C. § 5514. Accordingly, we consider this matter solely pursuant to our delegation of authority to decide travel and relocation claims for civilian federal employees, as set forth in Board Rule 501.

(ii) A claim for reimbursement of expenses incurred in connection with relocation to a new duty station.

Board Rule 502(a)(1). In applying that rule, we have held that an advance decision must involve an “actual employee claim for payment or reimbursement.” *Bianca Moebius-Clune*, CBCA 5352-TRAV, 16-1 BCA ¶ 36,506. While there is no specific form required for an advance decision request, the request “must refer to a specific payment or voucher,” and “it may not seek general legal advice.” Board Rule 502(a)(2).

As an initial matter, there is a question as to whether the agency, having paid the voucher that claimant submitted, can subsequently ask for an “advance decision” on the validity of that payment. In the past, we have recognized that, “once the agency has made and issued a decision on the request for reimbursement, it generally ‘is inappropriate’ for the agency to seek a Section 3529 decision.” *Moebius-Clune* (quoting *Milton Brown*, CBCA 4998-RELO, 16-1 BCA ¶ 36,205 (2015)). Nevertheless, there does not appear to be any blanket prohibition that would, in an appropriate case, preclude an agency from seeking an advance decision on the propriety of a repayment demand so long as it is tied to a specific, previously submitted voucher or payment request. *See, e.g., Reclamation Fund & Western Area Power Administration*, B-303180 (July 26, 2004) (considering a request for an advance decision regarding an agency’s ability to enforce repayment of a liability); *David L. Burich*, B-280018 (Jan. 27, 2000) (noting that, before section 3529 transferred the authority elsewhere, agencies could come to the Comptroller General “when [they] had questions concerning the validity of claims they were trying to collect”). Whether and when an advance decision on a potential demand for repayment will be made depend on the individual circumstances of a particular matter.

Nevertheless, any such request cannot be presented in the guise of a request for legal advice. *See Glenda F. Wall*, CBCA 3230-RELO, 13 BCA ¶ 35,397 (finding that the Board lacks authority to provide counsel through an advance decision when the agency “seeks general legal advice”). Here, the agency presents a series of questions that it would like the Board to answer about regulations and prior decisions that the agency understands it must consider in determining whether to seek repayment of these expenses. For example, the agency asks whether it may collect payment of TQSE made to a claimant who has not presented evidence of occupying temporary quarters. The problem with the agency’s request is that it has not actually decided that repayment of these expenses is warranted and that it wants the Board to confirm its right to do so. Instead, it would like the Board’s generalized advice as to what factors it should consider in making the decision.

Decision

We are without authority to provide the kind of generalized advice that the agency seeks and must decline the agency's request.

Marian E. Sullivan
MARIAN E. SULLIVAN
Board Judge