

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

June 12, 2001

GSBCA 15444-RELO

In the Matter of DANIEL H. CONEY

Daniel H. Coney, Lee's Summit, MO, Claimant.

Mary C. Lanham, Chief, Travel Payments Section, Program Support Center, Department of Health and Human Services, Rockville, MD, appearing for Department of Health and Human Services.

NEILL, Board Judge.

Claimant, Mr. Daniel H. Coney, is an employee of the Department of Health and Human Services. He asks that we review a determination of his agency that he is not entitled to reimbursement for the costs of taking his two young children with him on an authorized househunting trip. We affirm the agency's determination.

Background

In September 2000, Mr. Coney was issued orders transferring him from Denver, Colorado, to Kansas City, Missouri. Among the various provisions contained in these orders were authorizations for transportation of dependents and household goods, temporary quarters, residence transactions, temporary storage, a miscellaneous expense allowance, and a househunting trip.

Mr. Coney contends that he was encouraged by agency officials to take the househunting trip but that neither these individuals nor other agency employees advised him that the Government would reimburse him only for expenses incurred by him and his wife in making the trip. He also states that this limitation was not expressly stated in any of the scant written guidance provided him by the agency concerning permanent change of station (PCS) moves. He, therefore, arranged for his two children to accompany him and his wife on the authorized househunting trip.

The trip proved to be successful. Claimant contends that this was due in great part to the presence of his entire family. While in Kansas City, the family was able to make decisions on schools and housing. As a result, arrangements were made in advance for permanent quarters and the need for temporary quarters and storage of household goods at the new permanent duty station was eliminated.

Mr. Coney's agency denied his claim for the costs of bringing his children on the househunting trip. The agency states that its ruling is based upon specific provisions contained in the Federal Travel Regulation (FTR). The FTR defines "househunting trip" as one "made by the employee and/or spouse to the new official station locality to find permanent living quarters to rent or purchase." 41 CFR 302-4.1 (2000) (FTR 302-4.1). Furthermore, a question and answer in the FTR reads:

Who may travel on a househunting trip at the Government expense?

Only you and/or your spouse may travel on a househunting trip at Government expense.

Id. 302-4.7. In accordance with this limitation on reimbursement, another provision in the FTR states that reimbursement for househunting expense covers transportation and subsistence expenses of the employee and/or the employee's spouse. Id. 302-4.13. No mention is made of expenses incurred by other dependents of the employee. These limitations closely track with the relevant statutory provision which only authorizes payment of househunting expenses "for the employee and the employee's spouse." 5 U.S.C. § 5724a(b)(1) (Supp. V 1999).

The claimant puts forth a number of arguments why his claim should be paid. He writes that this was his first PCS move and he was not well versed in the applicable regulations. He takes strong issue with the agency's contention that federal employees are chargeable with at least constructive knowledge of federal statutes and regulations concerning travel and relocation of employees. He believes that he did take reasonable steps to ensure that he was acting within policy limitations. He explains that he read the "Permanent Change of Station Guide" provided to him by the agency, but that this booklet did not address the question of children accompanying their parents on a househunting trip.

Mr. Coney also believes that, inasmuch as his travel orders authorized transportation of dependents, this should be understood as including the transportation costs of children accompanying their parents on an authorized househunting trip. He also contends that only by taking his entire family with him on the househunting trip was it possible to make a final decision on permanent housing before actually moving to the new duty station. He points out that this ultimately resulted in a significant net savings to the Government in that temporary storage of household goods and temporary quarters allowance were both avoided. He notes -- most likely correctly -- that such a savings is in excess of the claim he now brings.

Discussion

Whatever Mr. Coney may believe regarding the impracticality of the proposition that a federal employee is charged with at least constructive knowledge of federal statutes and regulations, the principle is well established. This Board has itself applied it more than once. E.g., Mark Hummel, GSBCA 15205-RELO, 00-1 BCA ¶ 30,901; Jacqueline Williams, GSBCA 15026-RELO, 99-1 BCA ¶ 30,528. Indeed, in the Hummel case, the issue was

precisely the same as it is here, namely, whether the claimant could recover the cost of his children accompanying him on a househunting trip. Accordingly, whether Mr. Coney was or was not cognizant of the limitation on reimbursement of househunting expenses is, in the final analysis, immaterial.

It is also well established that, absent a specific provision in statute or regulation which might permit it under certain circumstances, neither an agency nor this Board has the authority to waive the applicability of FTR provisions for any federal employee who is subject to them. E.g., Fred Borakove, GSBCA 15379 (Apr. 19, 2001); Tanya Cantrell, GSBCA 15191-RELO, 00-1 BCA ¶ 30,894; Michael J. Kunk, GSBCA 14721-RELO, 99-1 BCA ¶ 30,164 (1998); Defense Intelligence Agency Employee, GSBCA 14745-RELO, 99-1 BCA ¶ 30,117 (1998).

We have, of course, considered all of the various arguments presented by Mr. Coney in support of his claim. Nevertheless, the hard and fast fact is that statute only authorizes payment of the househunting expenses for "the employee and the employee's spouse," and the FTR provision expressly states that *only* these individuals may travel on the househunting trip at Government expense. We, therefore, have no choice but to affirm the agency's determination and deny Mr. Coney's claim.

EDWIN B. NEILL
Board Judge