

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

January 15, 2002

GSBCA 15577-RELO

In the Matter of LOUIS L. LAWES

Louis L. Lawes, Eagle River, AK, Claimant.

Jeanette Hill, Chief, Travel Section, Department of Veterans Affairs Financial Services Center, Austin, TX, appearing for Department of Veterans Affairs.

NEILL, Board Judge.

Claimant, Mr. Louis L. Lawes, is an employee of the Department of Veterans Affairs. He asks that we review a determination by his agency that he, as a newly appointed employee, is not entitled to an allowance for miscellaneous travel expenses. For the reasons set out below, we affirm the agency's denial of Mr. Lawes' claim.

Background

Early in 2000, Mr. Lawes moved from Terrytown, Louisiana, to Anchorage, Alaska, to accept the position of social worker at a facility in Anchorage run by the Department of Veterans Affairs. His original orders authorizing him to proceed to Anchorage provided for his transportation and for the shipment and temporary storage of his household goods. His orders also authorized miscellaneous moving expenses in the amount of \$700. On June 13, 2000, approximately six months after the claimant had reported for duty in Anchorage, an agency official noticed that Mr. Lawes' orders authorized miscellaneous moving expenses. Aware that such authorization is not permitted for new employees under the Federal Travel Regulation (FTR), the official amended the orders to delete this authorization.

Mr. Lawes requested the agency to reconsider this amendment of his orders. He based this request on the facts that the miscellaneous expenses had been originally authorized, that all such matters had been discussed and agreed upon with agency officials before his departure, and that the error in authorizing these expenses was entirely the fault of the agency. On January 19, 2001, in response to Mr. Lawes' request, an agency official once more amended Mr. Lawes' orders, this time to put back the authorization of miscellaneous expenses which had been deleted. In the remark section of this second amendment, the official signing the amended orders explained that he had previously deleted the authorization of miscellaneous expenses because this was not a benefit available to new employees. On further reflection, however, he concluded that, in this case, the \$700 should

be paid to the claimant. The signing official's reasons for authorizing the payment were that the expenses were in fact authorized in the original orders, that the agency's error was not discovered and corrected until several months after the employee had reported for work, and finally, that without authorization of these expenses, the employee would remain indebted to the agency for an unliquidated portion of his original travel advance.

Upon receipt of this latest amendment to his orders, Mr. Lawes immediately submitted a claim for the \$700. Notwithstanding the most recent amendment of his orders, Mr. Lawes' claim was ultimately denied. It is this denial which the claimant now asks us to review.

Discussion

A threshold issue raised by the claimant is whether his agency has erred in concluding that he was a new hire or appointee. He writes that he is not a new hire but rather a "rehire" since he previously worked for over six years as a civil servant for the Department of Transportation. Under the Federal Travel Regulation (FTR), individuals appointed after a break in service are nonetheless considered new appointees unless their break in service was due to a reduction in force or a transfer of function. 41 CFR 302-1.10(a) (2000) (FTR 302-1.10(a)). In response to the Board's inquiry as to whether or not these exceptions might apply in his case, claimant has withdrawn the argument that his agency incorrectly classified him as a new hire when he moved from Terrytown, Louisiana, to Anchorage, Alaska.

By statute only certain, limited expenses may be authorized in connection with the relocation of a new hire or appointee. Agencies are authorized to reimburse the travel and transportation expenses of a new appointee and his or her immediate family, the transportation expenses of household goods and personal effects, and the cost of shipping a privately owned motor vehicle, from the place of residence at the time of selection to the initial duty station. 5 U.S.C. § 5723 (1994 & Supp. V 1999). New appointees, however, are not entitled to reimbursement of certain other expenses allowable to transferees, such as per diem for family members, cost of a house-hunting trip, expenses of subsistence while occupying temporary quarters, miscellaneous expense allowance, and residence sale and purchase expenses. Id. § 5724a (Supp. V 1999).

Regulations implementing these statutes likewise reflect the limitations on reimbursable travel and relocation expenses for new hires and appointees. The FTR expressly excludes new appointees or hires, who like Mr. Lawes have been assigned to a first permanent duty station, from receiving any miscellaneous expense allowance. FTR 302-1.10(f). On several occasions we have denied the claims of new appointees based upon these various regulatory restrictions. E.g., Barbara A. Caviness, GSBCA 15390-RELO, 01-2 BCA ¶ 31,498; Barry McGuire, GSBCA 15346-RELO, 01-1 BCA ¶ 31,343; John B. Smith, GSBCA 15319-RELO, 01-1 BCA ¶ 31,338; Debra Jo Dyer, GSBCA 15411-RELO, 01-1 BCA ¶ 31,335; Mukesh Nigam, GSBCA 15140-RELO, 00-1 BCA ¶ 30,821; Wendy Castineira, GSBCA 15092-RELO, 00-1 BCA ¶ 30,740 (1999); Karen R. Brown, GSBCA 14871-RELO, 99-2 BCA ¶ 30,429; Charles G. Bakaly, III, GSBCA 14750-RELO, 99-1 BCA ¶ 30,249, reconsideration denied, 99-1 BCA ¶ 30,367.

The agency, aware of these regulations, writes that it regrets the hardship caused to Mr. Lawes by its error but insists that it does not have the authority to override these regulations. The agency is correct. There are of course instances where we have not permitted an agency to withdraw or renege on a travel or relocation benefit previously authorized in an employee's travel orders and already relied upon by the employee. In those cases, however, the agencies had the power to authorize the benefits. E.g., Linda M. Conaway, GSBCA 15342-TRAV, 00-2 BCA ¶ 31,133; Elizabeth A. Hair, GSBCA 14285-RELO, 98-2 BCA 29,914; Cheryl A. Cadwell, GSBCA 14148-RELO, 97-2 BCA ¶ 29,066. That situation does not exist here. Statute and regulation both expressly rule out the possibility of a miscellaneous expense allowance for a new hire or appointee. 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. Wendy Castineira; William Archilla, GSBCA 13878-RELO, 97-1 BCA ¶ 28,799. This is true regardless of whether the employee relied to his or her detriment on the erroneous orders. Id.

Accordingly, we affirm the agency's denial of Mr. Lawes' claim.

EDWIN B. NEILL
Board Judge