

# Board of Contract Appeals

General Services Administration  
Washington, D.C. 20405

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September 13, 2002

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GSBCA 15816-RELO

In the Matter of MARY M. KAY

Mary M. Kay, APO Area Pacific, Claimant.

Kuk-Yong Kim, Travel Clerk, A-Det 176<sup>th</sup> Finance Battalion, Department of Defense, APO Area Pacific, appearing for Department of Defense.

**PARKER**, Board Judge.

## Background

In September 2001, Mary M. Kay, a civilian employee of the Department of Defense (DoD), was transferred from Fort Polk, Louisiana, to Camp Humphreys in Pyongtaek, Korea. In connection with the one-year unaccompanied (without family) permanent change of station, Ms. Kay claimed entitlement to a "Miscellaneous Expense" in the amount of \$500. The agency informed Ms. Kay that, without receipts documenting her miscellaneous expenses, she was entitled to be paid a maximum of \$350. Ms. Kay has appealed that decision and requests that the Board require DoD to pay her the difference of \$150.

## Discussion

Ms. Kay bases her claim on section 242.1 of the Department of State Standardized Regulations (DSSR), which, on the effective date of her transfer orders, provided as follows:

### **242.1 Miscellaneous Expense Portion**

- \_\_\_\_\_ a. The following amounts may be granted without receipts or itemizing required:
- (1) for an employee without family - \$500 or the equivalent of one week's pay, whichever is the lesser amount[.]

The DSSR implements the provisions of the Overseas Differentials and Allowances Act, which is codified in chapter 59 of title 5 of the United States Code. The purpose of the Act was to improve and strengthen overseas activities of the Government by establishing a uniform system for compensating all Government employees stationed overseas, regardless of the agency by which they were employed. The authority to promulgate regulations implementing this Act is delegated to the Secretary of State. Michael J. Krell, GSBCA

13710-RELO(REIN), 98-2 BCA ¶ 30,050. Because the allowances permitted under this Act are largely discretionary, the DSSR recognizes that agencies may, but are not required to, authorize payment of the differentials and allowances permitted under the Act. Id.; Frederic S. Newman, Jr., GSBCA 15873-TRAV (Aug. 6, 2002).

DoD and the Department of State have declared by regulation that the DSSR miscellaneous expense allowance is inapplicable to DoD employees who are transferred from the United States to a foreign country. Paragraph C1004 (Sept. 1, 2001) of DoD's Joint Travel Regulations (JTR), the regulations that implement the Federal Travel Regulation for civilian employees of DoD, provides:

Employees transferring from a CONUS [continental United States] or a non-foreign OCONUS [outside CONUS] area PDS [permanent duty station] to a PDS in a foreign country are entitled to the MEA [miscellaneous expense allowance] in JTR, Chapter 9 and NOT the [DSSR Miscellaneous Expense Allowance] (DSSR 242.6).

The Department of State, in DSSR 242.6, says that if an employee is eligible for a miscellaneous expense allowance under his or her own agency's regulations, the employee is not eligible for the DSSR miscellaneous expense allowance:

b. Employees eligible under their agencies' regulations for either a subsistence expense allowance or a miscellaneous allowance authorized by 5 U.S.C. 5724a(a)(3) or 5724a(b) respectively, (under the Federal Travel Regulation) are not eligible for a comparable subsistence expense portion or a comparable miscellaneous expense portion of the foreign transfer allowance as authorized by these regulations.

Thus, because Ms. Kay was eligible for the JTR miscellaneous expense allowance, she was not eligible for the DSSR miscellaneous allowance, and is entitled to be paid the amount prescribed in the JTR, not the DSSR.

At the time of Ms. Kay's transfer to Korea, paragraph C9004 of the JTR provided for a miscellaneous expense allowance of up to \$350 for employees without dependents, to be paid with or without receipts or itemized statements. The allowance was raised to \$500, effective February 19, 2002 -- too late for Ms. Kay. JTR C9004 (Feb. 1, 2002). Accordingly, DoD's payment of \$350 was correct and Ms. Kay's claim properly denied.

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ROBERT W. PARKER  
Board Judge