

Board of Contract Appeals
General Services Administration
Washington, D.C. 20405

March 11, 2004

GSBCA 16338-RELO

In the Matter of DAVID KLAUS

David Klaus, Alexandria, LA, Claimant.

Terry R. Burton, Supervisor, Travel Section, Financial Services Center, Department of Veterans Affairs, Austin, TX, appearing for Department of Veterans Affairs.

PARKER, Board Judge.

Background

In August 2003, David Klaus accepted a position with the Department of Veterans Affairs (VA) that required him to transfer from Big Spring, Texas, to Alexandria, Louisiana. VA's permanent change of station counselor told Mr. Klaus that he could include his then twenty-four-year-old daughter as part of his immediate family, and VA subsequently did include her on a list of "immediate family for travel purposes" contained in Mr. Klaus's official travel order.

Later, after Mr. Klaus had claimed reimbursement for his daughter's travel and temporary quarters subsistence expenses, the agency discovered that it had made a mistake by including Mr. Klaus's daughter as a member of his immediate family because, not being under twenty-one years of age or physically or mentally incapable of self-support, she did not come within the Federal Travel Regulation's (FTR's) definition of "immediate family." Mr. Klaus has asked the Board to review VA's decision not to reimburse him for his daughter's expenses.

Discussion

Transferred employees and their immediate families are entitled to transportation and per diem allowances when traveling to their new duty stations, 41 CFR 302-3.101, -4 (2003), and, when authorized, temporary quarters subsistence expenses for those same individuals. Id. 302-3.101, -6. The FTR defines "immediate family" in relevant part as follows:

Any of the following named members of the employee's household at the time

he/she reports for duty at the new permanent duty station or performs other authorized travel involving family members:

....

(b) Children of the employee or the employee's spouse who are unmarried and under 21 years of age or who, regardless of age, are physically or mentally incapable of self-support. . . .

Id. 301-3.1.

Mr. Klaus admits that his daughter was not under twenty-one years of age at the time he reported for duty and has not alleged that she was physically or mentally incapable of supporting herself. Accordingly, she was not a member of his "immediate family" for purposes of receiving relocation allowances, and the agency was thus correct in disallowing the claim for reimbursement of her expenses.

Although the agency did Mr. Klaus a disservice by leading him to believe that those expenses would be reimbursed, the law is well-settled that a Government official may not obligate the Government to spend money in violation of statute or regulation. E.g., Kevin S. Foster, GSBCA 13639-RELO, 97-1 BCA ¶ 28,688 (1996). In other words, neither erroneous advice given by a Government employee nor erroneous travel orders can create a right to reimbursement in excess of statutory and regulatory entitlements. Aman B. Kay, GSBCA 15543-RELO, 01-2 BCA ¶ 31,508; Wendy Castineira, GSBCA 15092-RELO, 00-1 BCA ¶ 30,740.

Decision

The claim is denied.

ROBERT W. PARKER
Board Judge