

# Board of Contract Appeals

General Services Administration  
Washington, D.C. 20405

---

June 30, 2004

---

GSBCA 16419-RELO

In the Matter of JOHN J. CHURCHILL

John J. Churchill, Chesapeake, VA, Claimant.

Judy Hughes, Travel Pay Services, Policy and Procedures, Defense Finance and Accounting Service, Columbus, OH, appearing for Department of Defense.

**HYATT**, Board Judge.

A new appointee who has relocated to accept employment with the Government may not be reimbursed for temporary quarters subsistence expenses (TQSE) or paid a miscellaneous expense allowance, since such benefits are not authorized by statute or regulation.

## Background

In February 2004, claimant, John J. Churchill, was extended an offer of employment by the Commander, Operational Test and Evaluation Force (COMOPTEVFOR), Department of the Navy, located in Norfolk, Virginia. At that time, Mr. Churchill was living in Fair Lawn, New Jersey. In support of the employment offer, COMOPTEVFOR issued travel orders authorizing Mr. Churchill's self-move of his household goods, miscellaneous expenses, and TQSE for Mr. Churchill and his three minor children. Mr. Churchill accepted the offer and moved to Norfolk.

After the travel orders were issued, and Mr. Churchill had borrowed the funds necessary to move to Norfolk, the Navy determined that it did not in fact have the authority to reimburse claimant for his subsistence expenses or to pay him a miscellaneous expense allowance. This has, unfortunately, resulted in significant financial hardship for Mr. Churchill, who relied on the promise that he would be reimbursed. COMOPTEVFOR states, in support of its request that Mr. Churchill somehow be compensated for these expenses, that it issued the orders erroneously in the good faith belief that these costs associated with relocating could be absorbed by the agency. The Defense Finance and Accounting Service

(DFAS) has confirmed the Navy's determination that the claim cannot be paid and has forwarded the claim to the Board for review.

### Discussion

By statute, a new appointee to federal service is entitled to certain benefits when he or she moves to a duty station from his or her place of residence at the time of appointment. 5 U.S.C. §§ 5722, 5723 (2000). These benefits are similar, but not identical, to those provided to an employee whom an agency transfers in the interest of the Government from one duty station to another. Id. §§ 5724, 5724a. In particular, the law authorizes agencies to reimburse transferred employees, but not new appointees, for relocation benefits such as TQSE, the cost of a house-hunting trip, a miscellaneous expense allowance, and residence sale and purchase expenses. Id. §§ 5723 (a)(1)-(3), 5724a. Both the Federal Travel Regulation (FTR) and the Joint Travel Regulations (JTR) contain provisions implementing these statutory provisions. See 41 CFR 302-3.2, -3.3 (2003); JTR C9002-1, C13115-B.1; accord, e.g., Charles M. Russell, GSBCA 16000-RELO, 03-1 BCA ¶ 32,176; David Kallman, GSBCA 15671-RELO, 03-1 BCA ¶ 32,118 (2002); Roy Katayama, GSBCA 15605-RELO, 01-2 BCA ¶ 31,542; Barbara A. Caviness, GSBCA 15390-RELO, 01-2 BCA ¶ 31,498.

We recognize that claimant's travel orders did, in fact, authorize reimbursement of TQSE and miscellaneous expenses. As DFAS properly advised the command, however, the erroneous authorization of these expenses cannot create an entitlement or bind the Government. Agencies cannot authorize the payment of money in violation of statute or regulation, even where a claimant may have relied in good faith on an improper authorization to his detriment. Russell (citing Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380, 384-85 (1947)); Joseph B. McGill, Jr., GSBCA 15783-RELO, 02-2 BCA ¶ 31,990. We are sympathetic with Mr. Churchill's plight, and recognize that it is unfortunate that claimant cannot be paid under these circumstances. Nonetheless, this long-standing and well-established rule serves the taxpayers' interest in not having unlawful disbursement made from public funds. Karl E. Serbousek, GSBCA 15950-RELO, 03-1 BCA ¶ 32,125 (2002); McGill.

### Decision

The claim is denied.

---

CATHERINE B. HYATT  
Board Judge