

# Board of Contract Appeals

General Services Administration  
Washington, D.C. 20405

---

December 7, 2004

---

GSBCA 16465-RELO

In the Matter of MARK R. ENGELBAUM

Mark R. Engelbaum, Grafenwoehr, Germany, Claimant.

Rick Miller, Civilian Travel and Overseas Allowances, Compensation and Legislation Division, Office of the Chief of Staff, Department of the Air Force, Washington, DC, appearing for Department of the Air Force.

**PARKER**, Board Judge.

The issue in this case is whether Mark R. Engelbaum, a civilian employee of the Department of the Air Force, is entitled to have his travel and transportation back to the United States paid by the Government at the conclusion of his overseas tour of duty. We hold that he is entitled to have those expenses paid by the Government.

## Background

In February 1996, Mr. Engelbaum, then a member of the uniformed services of the Air Force stationed in Vienna, Austria, decided to separate from the military under a voluntary separation incentive program. To process his separation, the agency assigned him to a transition center in Vilseck, Germany. After his separation, Mr. Engelbaum moved to Grafenwoehr, Germany.

In August 1996, Mr. Engelbaum was hired for a civil service position with the Air Force at Spangdahlem Airbase, Germany. The Air Force made a determination at that time that Mr. Engelbaum was eligible to negotiate a transportation agreement that would entitle him to retain the benefit he had earned in the military of paid travel and transportation to a home location of his selection in the United States at the conclusion of his overseas tour of duty. Mr. Engelbaum was provided with a copy of this determination and he was asked to sign it in an acknowledgment block at the bottom. He acknowledged the document, but the parties never actually entered into a transportation agreement. In March 1997, the Air Force transferred Mr. Engelbaum from Spangdahlem Airbase, to Ramstein Airbase, Germany.

In September 2003, Mr. Engelbaum found out by chance that the Air Force had, sometime in 1996, revisited its determination, concluding this time that he was not entitled to negotiate a transportation agreement. Mr. Engelbaum was never informed of the Air Force's redetermination. In fact, Mr. Engelbaum had been under the impression during the entire period of his civilian service that by acknowledging the Allowance and Benefits memorandum, he had cemented his entitlement to travel and transportation benefits. Because Mr. Engelbaum would like to return home to the United States after his overseas tour of duty, he has asked the Board to review the Air Force's decision that he was never entitled to enter into a transportation agreement and to declare that he is entitled to have his return travel and transportation expenses paid by the Government.

### Discussion

#### Was Mr. Engelbaum entitled to negotiate a transportation agreement in 1996?

At the time Mr. Engelbaum left the Air Force, members of the uniformed services who separated from the military under voluntary separation incentive or special separation programs were entitled to travel and transportation benefits from the old permanent duty station or out-processing transition center to a home of selection for up to one year after separation, or longer with an approved waiver from the Department of Defense (DoD). JTR (Joint Travel Regulations) U5130 (Feb. 1, 1996). In certain circumstances, when a recently separated member became employed overseas by the Federal Government in a civilian capacity, the former member's post-separation benefits could be continued through the use of a transportation agreement:

An agreement for transportation entitlement is an understanding between the department and the employee wherein the department agrees to furnish transportation and other related allowances in consideration for which the employee agrees to remain in the Government service for a specified period or such part thereof as his/her services may be required.

JTR C4001-A (Aug. 1, 1996).

Among the circumstances which entitled a newly-hired employee to negotiate a transportation agreement was the following:

#### C4002 WITH WHOM AGREEMENTS ARE NEGOTIATED

....

An initial agreement will be negotiated with a locally hired employee described in items 1 or 2 . . . .

1. A member of the Armed Forces of the United States separated or retired locally (within the country where the civilian position to which he or she is appointed is located) while serving overseas, provided that the former military member is appointed to a vacant appropriated fund civilian position before

expiration of the entitlement to return transportation to the United States accruing from the prior military Service.

JTR C4002-C(2)(a). The agency was required to determine an employee's eligibility at the time of appointment and record that determination through execution of an agreement with the employee:

To avoid misunderstandings at a later date, eligibility for transportation of dependents and/or HHG [household goods] from the employee's actual place of residence to the overseas duty station and/or return transportation to the actual place of residence will be determined at the time of appointment, or at the time the employee loses eligibility for return transportation, and recorded through the execution of an agreement.

JTRC4002-C(1)(b).

The Air Force maintains that Mr. Engelbaum was never entitled to negotiate a transportation agreement because his last overseas permanent duty station as a member of the military was in Austria and the civilian position to which Mr. Engelbaum was appointed was in Germany. Thus, the Air Force argues, Mr. Engelbaum's situation did not meet the requirement in JTR C4002 that the former member be separated or retired within the same country where the civilian position to which he or she is appointed is located.

We disagree. The JTR required only that the member be "separated or retired" locally. As Mr. Engelbaum points out, he was transferred to and officially separated from the military at the transition center in Vilseck, Germany. There was nothing in the JTR that required that the separated member's last permanent duty station be in the same country as the civilian position, just that the member be "separated or retired" from that country. Thus, because Mr. Engelbaum was separated in Germany, the same country in which his civilian position was located, his situation met the JTR requirement.

The Air Force also maintains that, notwithstanding the JTR, Mr. Engelbaum was not eligible to negotiate a transportation agreement because a Headquarters Air Force in Europe command policy promulgated in 1989 stated that "a former military member locally hired at a location beyond the daily commuting distance is not considered eligible for a TA [transportation agreement]." HQ USAFE Policy 89-2 (Locally Hired Eligibility for Transportation Agreement) (1989). Thus, according to the Air Force, because Vilseck, Germany (the location of the transition center) was not within commuting distance of Spangdahlem, Germany, Mr. Engelbaum was not eligible.

In 1996, when Mr. Engelbaum was hired as a civilian, the Air Force's European policy was no longer controlling. When the local policy was issued in 1989, the JTR, DoD's agency-wide policy, did not define the phrase "separated or retired locally" for purposes of transportation agreement entitlement. It was, therefore, appropriate for the individual DoD components to define the term as it applied to their individual situations. Effective January 1, 1996, however, the JTR was amended to define the term by adding the parenthetical phrase "(within the country where the civilian position to which he or she is

appointed is located)." Once the DoD-wide JTR was amended, the Air Force's local European policy, which had a different interpretation of the phrase "separated or retired locally," was effectively overridden. Compare JTRC4002 (Dec. 1, 1989) with id. (Jan. 1, 1996).

Mr. Engelbaum was entitled to negotiate a transportation agreement in 1996.

Is Mr. Engelbaum entitled to have his return travel and transportation paid by the Government?

The JTR required the Air Force to determine Mr. Engelbaum's eligibility for return transportation at the time of his appointment to the civilian position or at the time he would lose eligibility for return transportation incident to his military service, and to record that determination "through the execution of an agreement." JTR C4002 (1996). Here, because the Air Force wrongly determined that Mr. Engelbaum was not entitled to a transportation agreement, the agency never offered him the opportunity to enter into one.

The Comptroller General has held that where the lack of a negotiated transportation agreement, or a finding that an employee was not entitled to one at the time of his or her hire, was due to an administrative misinterpretation, the employee who has performed his or her service and is due to be transferred or separated as a result of the five-year overseas employment limitation is entitled to have his or her travel expenses for return to the United States paid by the Government. Ruth A. Meakins, B-125293 (Sept. 13, 1974). Although in this case DoD has not applied a five-year limitation to Mr. Engelbaum's overseas duty, the same basic rule applies. It was incumbent upon the Air Force to initiate the process for entering into a transportation agreement that would have spelled out Mr. Engelbaum's entitlement to paid travel and transportation expenses back to the United States at the conclusion of his overseas tour of duty. The agency's failure to abide by its own regulations cannot extinguish that entitlement.

#### Decision

The claim is granted. Mr. Engelbaum is entitled to have his return travel and transportation expenses to the United States paid by the Government upon his transfer or separation from overseas employment.

---

ROBERT W. PARKER  
Board Judge