

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

January 6, 2006

GSBCA 16733-RELO

In the Matter of DAVID W. SIMPSON

David W. Simpson, APO Area Europe, Claimant.

Kevin M. Gleeson, Office of the Legal Adviser, Department of State, Washington, DC, appearing for Department of State.

DeGRAFF, Board Judge.

Background

In mid-2005, the Department of State transferred David W. Simpson from one foreign post of duty to another. Although Mr. Simpson's wife lived with him at his old post, she could not move to his new post because families were not permitted to accompany employees who were assigned there. In connection with the transfer, State issued a travel authorization and paid his wife's travel and transportation expenses to return to the United States. In addition, State authorized Mr. Simpson a separate maintenance allowance for her. The travel authorization said Mr. Simpson's foreign transfer allowance included \$1000 for miscellaneous expenses. After Mr. Simpson completed his transfer, State decided he was eligible for only \$500 in miscellaneous expenses, because he had transferred to his new duty station by himself. Mr. Simpson asks us to review State's decision.

Discussion

According to the statute which governs Mr. Simpson's claim, an employee in a foreign area may be granted a transfer allowance for expenses incurred "incident to establishing himself at a post of assignment." 5 U.S.C. § 5924 (2000). An employee in a foreign area may also be granted a separate maintenance allowance if the area is, for example, dangerous or notably unhealthful. The allowance is meant to "meet the additional expenses of maintaining, elsewhere than at the post, the employee's spouse. . . ." *Id.*

The regulations which implement the statute limit the miscellaneous expense portion of the transfer allowance to \$500 for an employee "without family," and \$1000 for an employee "with family," unless receipts are provided. Department of State Standardized Regulations (DSSR) 242.1. If an employee has a family and arrives alone at a new post of duty, the amount of the miscellaneous expense portion of the transfer allowance is limited to \$500, although this can later be increased to \$1000 if the employee's family subsequently arrives at the new post. DSSR 242.5. When Mr. Simpson transferred, the DSSR provided that if an employee was granted a separate maintenance allowance on behalf of one or more family members, the amount of the miscellaneous expense portion of the transfer allowance was limited to \$500 if no family members transferred. DSSR 242.7.

State correctly decided that the miscellaneous expense portion of Mr. Simpson's foreign transfer allowance was limited to \$500. The regulations in effect when he transferred impose this limitation upon an employee who arrives alone at a new post of duty, and Mr. Simpson's wife did not accompany him to his new post. In addition, because he was given a separate maintenance allowance to help meet the added expenses of maintaining her in the United States and she did not transfer to the new post, the regulations limit the miscellaneous expense portion of the foreign transfer allowance to \$500.

One of Mr. Simpson's co-workers suggests he ought to receive the \$1000 allowance because this is the amount set out in the travel authorization. A travel authorization cannot, however, create a benefit in excess of the one allowed by an agency's regulations. The DSSR limited Mr. Simpson's allowance to \$500, and this limitation cannot be altered by a travel authorization. *Kevin R. Kimiak*, GSBCA 16641-RELO, 05-2 BCA ¶ 33,007. His co-worker also suggests Mr. Simpson ought to receive the \$1000 allowance because DSSR 242.7 says the \$500 limit applies only if no family members transferred and, in his view, Mr. Simpson's wife transferred when she moved to the United States. To read DSSR 242.7 in this way would create a conflict with DSSR 242.1 and 242.5, which limit the allowance to \$500 until an employee's family arrives at the new post of duty. We prefer to read regulations consistently, as does the agency here when it reads DSSR 242.7 to say

Mr. Simpson's wife would have to "transfer" to his new post of duty before the amount of the allowance increased to \$1000.

The claim is denied.

MARTHA H. DeGRAFF
Board Judge