

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

March 14, 2006

GSBCA 16767-RELO

In the Matter of JENNIFER HARRIS

Jennifer Harris, Denver, CO, Claimant.

Marianne Myles, Director, Recruitment, Examination and Employment, Department of State, Washington, DC, appearing for Department of State.

BORWICK, Board Judge.

Claimant, Ms. Jennifer Harris, is an officer in the Department of State's (agency's) Foreign Service. She contests the agency's determination that she was not entitled to travel benefits as a new appointee from Denver, Colorado. The agency treated her as a new appointee from Washington, D.C., where she had resided for some time before her appointment to the Foreign Service. We deny the claim, since the agency correctly applied the Foreign Affairs Manual (FAM).

Background

On August 10, 2004, the agency notified claimant of her eligibility for appointment as a Junior Officer in the Foreign Service. On November 15, 2004, the agency offered claimant a position as a Foreign Service Officer/Career Candidate for the January 2005 class. When claimant received the appointment offer, she resided at an address within metropolitan Washington, D.C., well within the fifty-mile radius of the designated temporary duty station. Claimant had been living and working in the metropolitan Washington area for over a year before the agency's appointment offer. The agency addressed both the eligibility notification and the appointment offer to claimant's Washington address.

Claimant says that she was born and raised in Colorado, attended college in Boston, Massachusetts, and worked at the United States Embassy in Paris as a paid intern until May 2003. Having completed her internship, claimant then started what she regarded as short-term employment for a Department of State contractor in Virginia, having, during her internship, already started the process of applying for a position in the Foreign Service. Claimant states that although she lived in Washington, D.C., she maintained her permanent residence in Denver, Colorado. Claimant notes that she kept her Colorado driver's license, voted in Colorado, had her credit card bills sent to her Colorado address, and paid taxes as a Colorado resident. Claimant says that in the summer of 2004, when the agency confirmed her security and medical clearances in connection with her application for an appointment in the Foreign Service, she sublet her apartment in Washington and lived in a friend's apartment. She notes that most of her belongings were in Colorado.

In its appointment notification, the agency told claimant that since she was appointed from within the Washington, D.C., metropolitan area, she was not authorized to receive per diem reimbursement nor was she authorized shipment of her household goods until her departure from the area on travel orders. The agency advised claimant that it regarded claimant's initial assignment to the Washington, D.C., area as a temporary training assignment. The agency also told claimant that her initial orientation would be seven weeks in duration at the National Foreign Affairs Training Center, with total training to last between ten weeks and one year, depending on the requirements of the overseas position to which claimant would be assigned.

Claimant disputed the agency's determination that she was appointed to the Foreign Service from the Washington, D.C., area, and maintained she was entitled to per diem and subsistence as if she had been appointed from Denver, Colorado. She regards Denver, Colorado as her legal residence because she maintained her ties to Colorado as described above.

Discussion

At the relevant time the FAM provided:

New appointees who reside within 80 kilometers (50 miles) of the temporary duty location at the time of appointment or other employees who commute daily from their permanent residence, are not entitled to any per diem or subsistence.

6 FAM 151.2(c).¹

At the time of her appointment to the Foreign Service, and for a period of time before that, claimant actually resided in Washington, D.C., within fifty miles of the temporary duty station. The FAM uses the verb “reside” in the section quoted above to mean the act of actually physically residing in a place, not the act of establishing a purported legal residence. The law applicable to entitlements for newly appointed civilian Executive Branch employees is to the same effect. *See* 5 U.S.C. § 5723 (2000); *Anthony P. Belmont, M.D.*, GSBCA 15463-RELO, 01-1 BCA ¶ 31,344. In an analogous context, in the Federal Travel Regulation, the term “residence” for entitlement to real estate transaction expenses means the actual residence to and from which the employee commutes daily, not a place that the employee regards as his or her legal residence. *See Paul Henderson*, GSBCA 15480-RELO, 01-2 BCA ¶ 31,501. The Board denies the claim.

ANTHONY S. BORWICK
Board Judge

¹ The identical provision is now found at 14 FAM 571.2(c).