

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

March 17, 2006

GSBCA 16785-RELO

In the Matter of JEFFREY A. WHITTALL

Jeffrey A. Whittall, Monument, CO, Claimant.

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

PARKER, Board Judge.

Background

When Jeffrey A. Whittall retired from active duty in the Air Force in 2004, he became entitled to have the Government pay for a move from his last post of duty in Vacaville, California, to a “home of selection” within the continental United States. While he was still in Vacaville, Mr. Whittall found a civilian position with the Air Force at Schriever Air Force Base (AFB) in Colorado Springs, Colorado. The civilian position included payment of relocation expenses, including transportation and temporary storage of Mr. Whittall’s household goods.

In July 2004, the Air Force’s Civilian Personnel Office (CPO) at Schriever AFB informed Mr. Whittall that the office had no current available funding for permanent changes of stations and advised Mr. Whittall to use his military entitlement to move from Vacaville to Colorado Springs. Mr. Whittall agreed to use his military entitlement to move to Colorado Springs if the CPO would issue a written guarantee that he could later use his civilian permanent change of station (PCS) entitlement to move his household goods from

a home that he would rent for one year in Colorado Springs to a new home that he would have constructed. By electronic mail, the CPO told Mr. Whittall:

If you decide to use your military PCS entitlement to move to a rental house for 1 year, you will still be issued a [sic] civilian PCS orders. Your civilian PCS orders will pay for your delayed household goods delivery to your permanent house after 1 year or so as long as you do not let your 2 year civilian PCS entitlement expire.

The CPO issued PCS orders for the move from Vacaville to Schriever AFB in August 2004, and Mr. Whittall moved to a rental house in Colorado Springs using his military entitlement.

Mr. Whittall's new house will be ready in July 2006, and he has asked the Air Force to transport his household goods there. The Air Force has refused, on the basis that it lacks authority to pay for an employee's move from one dwelling in the Colorado Springs area to another dwelling in the same area. The Air Force "agree[s] that the employee was in 'temporary residence' in [Colorado]" but maintains that Mr. Whittall received erroneous advice concerning the agency's authority to pay for the second move. Mr. Whittall has asked the Board to review the Air Force's decision.

Discussion

By statute, a new appointee to federal service is entitled to certain benefits when he or she moves to his 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 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, but they are not identical. Agencies are authorized to reimburse the travel and transportation expenses of a new appointee and his or her immediate family, the transportation and temporary storage expenses of household goods and personal effects, and the cost of shipping a privately owned motor vehicle from the place of residence at the time of selection to the initial duty station. *Id.* § 5723. The Federal Travel Regulation similarly provides for payment of the foregoing expenses. 41 CFR 302-3.2 (2003); *Jerome A. Dosdall*, GSBCA 16244-RELO, 04-1 BCA ¶ 32,464. The Joint Travel Regulations (JTR) are to the same effect. JTR C5080-B(6)(c).

We have held that the purpose of the statute authorizing payment of relocation expenses for transferred employees is "to help pay the cost of *moving to the new place of employment.*" *Linda L. Skaggs*, GSBCA 16494-RELO, 05-1 BCA ¶ 32,813 (quoting S. Rep. No. 89-1357, at 2-4 (1966), *reprinted in* 1966 U.S.C.C.A.N. 2565-67) (emphasis added). The statute is designed to authorize payment of expenses "incident to transfer from

the old to the new station.” *Id.*; see *Paul W. Gard, Jr.*, GSBCA 15311-RELO, 00-2 BCA ¶ 31,053. These same considerations apply to newly-hired appointees moving to their first duty stations. *Richard E. Stegall*, GSBCA 16454-RELO, 04-2 BCA ¶ 32,794.

Unfortunately for Mr. Whittall, the Air Force’s determination that it lacks authority to pay for Mr. Whittall’s move to his newly-constructed house was correct. Although the agency clearly did Mr. Whittall a disservice by giving him erroneous advice, Mr. Whittall’s move from one house to another in the Colorado Springs area cannot be considered a move “to the new place of employment” or “incident to the transfer.” By the time he moves in July 2006, he will have lived and worked at his duty station for almost two years. This is far too long to be considered as a continuation of the move from Vacaville to Colorado Springs. At this point Mr. Whittall is simply moving from one residence to another in the area of his duty station, a cost the statutes and regulations governing payment of relocation expenses do not authorize.

The fact that the Air Force provided Mr. Whittall with erroneous advice concerning his move does not entitle him to benefits that are not authorized by statute and regulation. We recently explained in some detail the reasons for this rule:

Allowing an agency to make a payment for a purpose not authorized by statute or regulation would violate the Appropriations Clause of the Constitution. U.S. Const. art. I, § 9, cl. 7 (“No money shall be drawn from the Treasury, but in consequence of Appropriations made by Law.”) The Supreme Court consequently has made clear that an executive branch employee’s promise that the Government will make an “extrastatutory” payment is not binding. Where relevant statute and regulations do not provide for payment for a particular purpose, an agency may not make such payment. *Teresa M. Erickson*, GSBCA 15210-RELO, 00-1 BCA ¶ 30,900 (citing *Office of Personnel Management v. Richmond*, 496 U.S. 414 (1990); *Federal Crop Insurance Corp. v. Merrill*, 332 U.S. 380 (1947)). Although the employee may have relied to his detriment on his agency’s assurances, he may not be reimbursed because the law prevents the agency from honoring commitments made in its name by officials who do not have the power to make them. *Alexander S. Button*, GSBCA 16138-RELO, 04-1 BCA ¶ 32,452 (2003); *Louise C. Mâsse*, GSBCA 15684-RELO, 02-1 BCA ¶ 31,694 (2001); *Gary MacLeay*, GSBCA 15394-RELO, 01-1 BCA ¶ 31,210 (2000).

Bruce Hidaka-Gordon, GSBCA 16811-RELO (Mar. 13, 2006).

Payment of Mr. Whittall's moving expenses would be contrary to statute and regulation. Accordingly, his claim for payment of these expenses must be denied.

ROBERT W. PARKER
Board Judge