

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

May 26, 2006

GSBCA 16797-RELO

In the Matter of TERRANCE A. REEDY

Terrance A. Reedy, Alturas, CA, Claimant

Tamara L. Hanan, Director, Budget and Finance, Albuquerque Service Center, Forest Service, Albuquerque, NM, appearing for Department of Agriculture.

PARKER, Board Judge.

Background

When Terrance A. Reedy was offered a job by the Department of Agriculture (the agency) in August 2002, he was employed by the Consolidated Tribes of the Salish and Kootenai Tribes of the Flathead Reservation. Prior to that, Mr. Reedy had been employed by the Department of the Interior's Bureau of Indian Affairs (BIA) but had lost his job in a reduction in force in September 1995.

Mr. Reedy was issued travel orders authorizing full relocation benefits, including real estate and temporary quarters expenses. After Mr. Reedy arrived at his duty station at the Modoc National Forest, the agency realized that it had mistakenly authorized benefits only available to transferred, rather than newly-hired, employees. Mr. Reedy has asked that the Board review the agency's decision not to reimburse him claimed expenses related to his real estate transactions and his stay in temporary quarters.

Discussion

By statute, a new appointee to federal service is entitled to certain benefits when he or she moves to the 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 and makes clear that other expenses, such as subsistence expenses while occupying temporary quarters and residence sale and purchase expenses may not be reimbursed. 41 CFR 302-3.2 (2002); *Jerome A. Dosdall*, GSBCA 16244-RELO, 04-1 BCA ¶ 32,464 (2003).

Because Mr. Reedy was not re-employed by the Government within one year after the reduction in force in which he lost his job at BIA, Mr. Reedy is considered to be a new appointee for purposes of travel and relocation benefits. 41 CFR 302-3.1(b). Accordingly, he is entitled to be reimbursed only those benefits provided by statute and regulation for new appointees. Unfortunately, Mr. Reedy's travel orders erroneously authorized benefits to which he was not entitled. It is well-settled, however, that the fact that he received such orders did not create a right to reimbursement. We have consistently followed the Supreme Court's direction that the Government cannot be held to its representatives' promises when they are contrary to law; subjecting the Government to estoppel in these circumstances would allow it to spend money in ways which have been forbidden by Congress. *E.g.*, *Dosdall; Louise C. Masse*, GSBCA 15684-RELO, 02-1 BCA ¶ 31,694 (2001) (citing *Office of Personnel Management v. Richmond*, 496 U.S. 414 (1990); *Federal Crop Insurance Corp. v. Merrill*, 332 U.S. 380 (1947)). Specifically, we have held that travel orders that erroneously authorize relocation expenses to which a new employee is not entitled cannot create a right to reimbursement in excess of the statutory and regulatory entitlements. *Wendy Castineira*, GSBCA 15092-RELO, 00-1 BCA ¶ 30,740 (1999); *William Archilla*, GSBCA 13878-RELO, 97-1 BCA ¶ 28,799. The agency was thus correct in declining to reimburse Mr. Reedy for the disputed expenses.

ROBERT W. PARKER
Board Judge