

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

April 26, 2006

GSBCA 16801-RELO

In the Matter of JAMES W. RORIE, SR.

James W. Rorie, Sr., FPO Area Pacific, Claimant.

Oswaldo Luis Gratacos, Office of Inspector General, Agency for International Development, Washington, DC, appearing for Agency for International Development.

DANIELS, Board Judge (Chairman).

The Agency for International Development (AID) transferred James W. Rorie, Sr., from Washington, D.C., to Manila, Philippines, in August 2005. AID paid most of the expenses Mr. Rorie incurred in moving to the Philippines. The employee challenges the agency's determination not to pay two of the amounts claimed. The first amount is for fees paid to the Bureau of Citizenship and Immigration Services to process applications made by the employee's wife. The other is for the costs of newspaper advertisements for rental of the employee's house in the Washington area which were rendered useless when the employee's transfer was delayed.

Before addressing the matters raised by Mr. Rorie, we consider AID's position that the Board does not have jurisdiction to consider the claim. The agency reasons as follows: Mr. Rorie is a member of the Foreign Service. Congress created a personnel system for the Foreign Service which is separate from the personnel system for the Civil Service. *See* S. Rep. No. 96-913, at 1-2 (1980), *reprinted in* 1980 U.S.C.C.A.N. 4419, 4419-20. The Secretary of State is responsible for administering this separate system. 22 U.S.C. § 3921 (2000). Congress has established a Foreign Service Grievance Board, which may resolve grievances by members of the Foreign Service regarding the "[a]lleged denial of an allowance, premium pay, or other financial benefit to which a member claims entitlement

under applicable laws or regulations.” *Id.* §§ 4135-4140; 3 Foreign Affairs Manual (FAM) 4412(c)(7), 4440-4479, 4451. Among the “other financial benefits” which may be the subject of a grievance are allowable travel and miscellaneous expenses, for which the Secretary has established rules in the Foreign Affairs Manual. 14 FAM 530-536, 560-568. “Therefore,” AID concludes, “the proper venue for [Mr. Rorie’s] appeal is the Foreign Service Grievance Board,” not the General Services Board of Contract Appeals.

The General Services Board of Contract Appeals has already settled many claims by Foreign Service Officers for expenses incurred in relocating to new duty stations. *E.g.*, *Jennifer Harris*, GSBCA 16767-RELO (Mar. 14, 2006); *James L. Landis*, GSBCA 16684-RELO (Feb. 24, 2006); *Michael S. Ross*, GSBCA 16737-RELO, 06-1 BCA ¶ 33,154 (2005); *David Hunter*, GSBCA 16651-RELO, 05-2 BCA ¶ 33,102; *Mark Burnett*, GSBCA 16578-RELO, 05-1 BCA ¶ 32,958. Thus, AID’s suggestion that we dismiss Mr. Rorie’s claim for lack of jurisdiction seems odd. Nevertheless, we examine it fully.

While it is possible that Mr. Rorie might at one time have filed a grievance with the Foreign Service Grievance Board regarding his claim for travel expenses, that board is not the only forum at which he might have filed. The FAM provides that –

A grievant may not file a grievance with the [Foreign Service Grievance] Board if the grievant has formally requested, before filing a grievance, that the matter or matters which are the basis of the grievance be considered or resolved and relief be provided, under another provision of law, regulation, or Executive Order, and the matter has been carried to final decision under such provision on its merits or is still under consideration.

3 FAM 4428(a).

Another provision of law, 31 U.S.C. § 3702(a)(3), gives the Administrator of General Services the authority to “settle claims involving expenses incurred by Federal civilian employees for official travel and transportation, and for relocation expenses incident to transfers of official duty station.” The Administrator has delegated his responsibilities under this law to the General Services Board of Contract Appeals. GSA Order ADM P 5450.39C CHGE 78 (Mar. 21, 2002). Because Mr. Rorie, as a member of the Foreign Service, is a Federal civilian employee, he may choose to have his claim settled by us. He has made such a choice, and our consideration of his claim precludes him from seeking resolution through the Foreign Service Grievance Board. *Landis*. Thus, contrary to AID’s position, the General Services Board is now a proper forum for settlement of Mr. Rorie’s claim and the Foreign Service Board is not.

We now turn to the claim itself. The purpose for which Mr. Rorie paid fees to the Bureau of Citizenship and Immigration Services is not entirely clear from the filings made by the employee and the agency. Mr. Rorie asserts that the fees were paid to obtain a diplomatic passport for his wife. AID, on the other hand, says that the fees were paid to obtain United States citizenship for her. The difference is important because the FAM provides that “[f]ees in connection with the issuance of passports and visas, and other legally required costs” are reimbursable travel expenses, but it does not list citizenship application fees as reimbursable. 14 FAM 562(a)(7). Passport and visa fees are considered to be incurred incident to a transfer to a station abroad, whereas citizenship application fees are viewed as being incurred for reasons of personal preference independent of a transfer.

Mr. Rorie conflates the reimbursable and nonreimbursable expenses by asserting that United States citizenship is a prerequisite for the variety of passport necessary to receive the variety of visa essential to staying in the Philippines for an extended period and working there. In September 2004, when he was selected for the assignment in the Philippines, his wife was not an American citizen. It is clear from the record that during the period between September 2004 and August 2005, when the Rories finally moved to the Philippines, efforts were made which culminated in Mrs. Rorie receiving both citizenship and the necessary passport. It is not clear, however, whether the charges for which Mr. Rorie seeks reimbursement were for one or the other. To the extent that the employee can prove to the agency’s satisfaction that the fees were for a passport or visa, those fees are reimbursable. To the extent, however, that the fees were for application for citizenship, they are not.

What of the costs of the newspaper advertisements? In the early fall of 2004, Mr. Rorie’s assignment to the Philippines was scheduled to begin in February 2005. Late in the fall, it was rescheduled to begin in the summer of 2005. At a time when the assignment was supposed to commence in February, according to Mr. Rorie, he placed the advertisements for the rental of his home while he was abroad. The change of the starting date of the assignment made it impossible for the employee to rent the house in February, since he would still be living in it. Thus, the ads were for naught.

AID refused to reimburse Mr. Rorie for the costs of the advertisements because it does not pay for “losses in selling, buying or renting real and personal property and costs of items related to such transactions.” This explanation misses the mark, for it does not address the employee’s argument that the costs were wasted as a result of an action of the agency – the determination to change the date on which the assignment to the Philippines would begin. The record shows, however, that AID’s decision was correct, even if its justification was not. The primary reason for the delay of Mr. Rorie’s transfer was not that the agency needed to keep him in Washington for an additional six months, but rather, that it generously allowed him to remain there until his wife had obtained United States citizenship and therefore could

qualify for a diplomatic passport. The costs of the advertisements were wasted because AID modified its position as a courtesy to the employee.

Although neither the employee nor the agency has cited a FAM provision which addresses such a situation, we have found one which applies by analogy. Under 14 FAM 565.1, “[w]hen a reservation for accommodations on a train, vessel, or plane is canceled because of unavoidable delay or official necessity, the cost of the service fee charged by the carrier is allowed. Fees paid for cancellations of reservations for personal reasons or personal delays in notifying the carrier are not reimbursable.” This provision is based on the sound principle that the party which causes a change in plans is responsible for the costs associated with that change. Applying that principle to the situation at hand, we see that the advertisements were made unnecessary for reasons benefiting Mr. Rorie personally, not official necessity. The employee should therefore bear the costs of the advertisements.

STEPHEN M. DANIELS
Board Judge