

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

March 1, 2006

GSBCA 16698-TRAV

In the Matter of DOUGLAS R. DORRER

Douglas R. Dorrer, APO Area Europe, Claimant.

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

BORWICK, Board Judge.

Mr. Douglas Dorrer, claimant, is an employee who was locally hired by the Department of the Air Force in Germany. He claims he is entitled to a transportation agreement (TA) and the travel benefits that accompany the TA because the circumstances of his initial employment with a government contractor in Germany made him a domestic hire. He also claims that he should not have been regarded as a local hire, due to his status as a technical expert and member of the civilian component under Exchange of Notes (Article Seventy-Three) of the Supplementary Agreement to the North Atlantic Treaty Organization (NATO) Status of Forces Agreement (SOFA) while he was a contractor employee.

We deny the claim. The agency acted correctly in applying statute and regulation in determining that claimant was not entitled to a TA. Claimant was a local hire and his status as a technical expert under the NATO SOFA did not change his status as a local hire.

Background

Claimant was employed as a contractor with Scientific Applications International Corporation (SAIC) in Pirmasens, Germany. In relocating to Germany from Clarksburg,

West Virginia, claimant traveled under a Defense Information Systems Agency (DISA) travel authorization issued to SAIC. The Government's travel authorization provided that all expenses incurred as a result of claimant's travel would be borne by SAIC under its contract with DISA.

Claimant's initial relocation from Clarksburg, West Virginia, to Germany was pursuant to an assignment agreement between claimant and SAIC, which provided a relocation package from the point of origin, Clarksburg, West Virginia, to Germany (including shipment of personal items and household goods), a cost of living differential allowance, a cost of living housing allowance, and repatriation benefits. Under the assignment agreement, claimant agreed to work for SAIC for at least twelve months to be eligible for the repatriation benefits. If claimant voluntarily terminated employment with SAIC before the expiration of the first twelve-month period, claimant was required to reimburse SAIC the relocation benefits SAIC had paid.

While working for SAIC, claimant was classified as a technical expert as defined by the Exchange of Notes (Article Seventy-Three) of the Supplementary Agreement to the NATO SOFA. Under SAIC's contract with the Government, because claimant was classified as a technical expert under the SOFA, claimant was eligible for logistical military support at the discretion of the base commander. Additionally, as a technical expert under the SOFA during the term of claimant's assignment, claimant was exempt from payment of certain host country taxes, immigration requirements, and customs duties.

On or about June 3, 2003, the agency advertised for the position of Telecommunications Specialist at Ramstein Air Force Base (AFB), Germany. The agency referred nineteen qualified candidates for selection, fifteen of whom applied from the United States and four of whom were residing overseas.

Claimant does not dispute the agency's contention that claimant resided in Germany between the time claimant applied for employment with the agency and the time the agency offered claimant employment, but claimant explains:

The only reason I was in the vicinity of Ramstein Air Base, Germany at the time of hire was because I was hired from the [United States] and sent there to work for another government agency. That agency, DISA, closed their DoD facility and instructed all employees to seek other positions.

That statement is not entirely accurate. Before the agency hired him, claimant did not work "for another government agency." The record is clear that claimant was employed by SAIC, under its contract with DISA.

On about December 5, 2005, by e-mail message, the agency notified claimant of his selection for the position at Ramstein Air Base. In that e-mail message, an agency official advised claimant that he would be eligible for living quarters allowance (LQA) payments “if the position is one of the position[s] we would recruit for in the [United States].”

On December 10, 2005, the agency told claimant that as a local hire he was not eligible for the LQA, and subsequently told him that he was not entitled to a TA because negotiation of the TA was not required for recruitment purposes. The agency explains that an initial TA with a locally hired employee would only have been negotiated if it was required for recruitment purposes and if the position was one for which qualified local applicants were not readily available. The agency did offer claimant the option of registration in the priority placement program after completion of three years of employment, which would have made him eligible for return travel to the United States when he was selected for a position in the United States.

Discussion

Statute provides that an agency may pay travel and transportation expenses on the return of an employee from his post of duty outside the continental United States to the place of his actual residence “at the time of assignment to duty” outside the continental United States. 5 U.S.C. § 5722(a)(2) (2000). Under the Joint Travel Regulations (JTR), this entitlement is memorialized by a transportation agreement. JTR C4001. A transportation agreement is a written understanding between a Department of Defense (DoD) component and an employee, wherein the component agrees to furnish certain travel benefits in exchange for the employee agreeing to remain in Government service for at least a specified period. JTR C4001-A. The initial agreement establishes benefits for the employee, the employee’s dependents, and the employee’s household goods. *Id.* A transportation agreement for a locally hired employee is not an entitlement but is specifically intended to be a recruitment incentive for a civilian employee with an actual residence in the continental United States to accept federal employment in a foreign or non-foreign area outside the continental United States (OCONUS). JTR C4001-B.1.a.

We have held, in light of the limiting language of the statute and the JTR’s implementation of the statute, that a claimant seeking return travel to the United States from an OCONUS location, must establish that he or she was transferred as a government employee to the OCONUS location or have been specifically authorized to receive the benefit by the agency as a local hire. *Rebecca B. Harpole*, GSBCA 16589-TRAV, 05-2 BCA ¶ 33,041.

Claimant argues that, in his initial travel from Clarksburg, West Virginia, to Germany, he was essentially a federal employee:

The fact that I had already entered into another transportation agreement with another agency of the Department of Defense, and its contracted firm, SAIC, prior to departing the United States, should not be set aside.

As further support for that position, claimant argues, “I was hired by SAIC from the [United States] and traveled to Germany with official travel orders issued by [DISA].” Claimant’s argument must fail. Claimant relocated to Germany as an SAIC employee, under an assignment agreement with SAIC, not the Federal Government. The “official travel orders” did not convert claimant from an SAIC employee to an employee of the Federal Government. That document was merely DISA’s authorization to SAIC for claimant’s transportation, with all costs to be borne by SAIC.

Claimant argues that he was a “member of the civilian component” under the NATO SOFA, and, as such, he should not be considered as a local hire, but as a federal employee hired from the United States. To address this argument, we must consider the purposes of SOFAs. SOFAs, such as the NATO SOFA, arose out of the principle that a sovereign nation has exclusive jurisdiction to punish offenses against its laws committed within its borders, unless it expressly or impliedly consents to surrender its jurisdiction. *Wilson v. Girard*, 354 U.S. 524, 529 (1957) (citing *Schooner Exchange v. M’Faddon*, 7 Cranch 116 (1812)).

The broad purpose of SOFAs is to seek relief from local jurisdiction for United States forces and ancillary personnel based in friendly states. Colonel Richard J. Erikson, *Status of Forces Agreements: A Sharing of Sovereign Prerogative*, 37 Air Force L. Rev. 137, 140 (1994). In the area of criminal law, for example, under the NATO SOFA, both the sending state (i.e., the United States) and the receiving state have agreed which nation exercises primary jurisdiction over criminal offenses depending upon the identity of the offender, the nature of the offense, and the identity of the victim. *See In Re Extradition of John Burt*, 737 F.2d 1477, 1479 n.3 (7th Cir. 1984) (describing sharing of criminal jurisdiction in the NATO SOFA). SOFAs may also relieve the members of the sending state of the incidents of foreign residence. Thus persons covered by a SOFA may not be required to comply with many local laws such as military draft, work permits, and taxation while working within the sending state. 37 Air Force L. Rev. at 140.

Claimant’s designation as a member of the civilian component under Exchange of Notes (Article Seventy-Three) to the Supplemental Agreement of the NATO SOFA was to provide claimant with the protection of the SOFA while working as a technical expert for SAIC. Claimant’s designation as a technical expert and a member of the civilian component

did not change his employment status from a contractor to a federal employee or make the agency's hire of claimant a domestic hire.

The record is clear that the agency hired claimant locally from his position with SAIC in Germany. The agency never sought to negotiate a TA with claimant as a recruitment incentive. Given that four qualified candidates residing in the overseas area applied for that position, the agency possessed sound reasons for determining that granting claimant a TA was not necessary as a recruitment incentive to fill the position.¹ The Board denies the claim.

ANTHONY S. BORWICK
Board Judge

¹ Claimant argues that the agency hired other technical experts locally and granted them TAs. The circumstances of those hires are not in the record; it may be that the agency determined that a recruitment incentive was necessary for those individuals. Agency officials are presumed to act in accordance with law. *Hoffman v. United States*, 894 F.2d 380, 385 (Fed. Cir. 1990). Claimant has not rebutted that presumption. Moreover, any erroneous action in those instances would certainly not justify erroneous agency action in this matter.