

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

November 28, 2006

GSBCA 16950-TRAV

In the Matter of SHAUN H. VINCENT

Shaun H. Vincent, Baton Rouge, LA, Claimant.

Jean M. Peddicord, Director, Division of Travel Management, Social Security Administration, Baltimore, MD, appearing for Social Security Administration.

DANIELS, Board Judge (Chairman).

Shaun H. Vincent was employed by the Social Security Administration (SSA) in or near New Orleans, Louisiana, in August 2005. When Hurricane Katrina hit New Orleans at the end of the month, Mr. Vincent and his son, Shaun-Michael Vincent, evacuated the city. Mr. Vincent found a safe haven in Baton Rouge, Louisiana, and he was detailed to work at SSA's Baton Rouge North office on September 9. SSA paid Mr. Vincent special travel and subsistence allowances for the 180-day period of time from August 27, when he left New Orleans, until February 22, 2006. The agency refused to pay similar allowances for Shaun-Michael, however. Mr. Vincent has asked us to reverse SSA's decision.

Background

On June 19, 2005, the Family Court of East Baton Rouge Parish approved a shared custody implementation plan under which Mr. Vincent and his ex-wife, Shaun-Michael's mother, were designated co-domiciliary parents. The court adopted a plan under which the boy, who was then approaching his second birthday, would reside approximately half the time with each parent. Such a plan is consistent with the provision in Louisiana law which

authorizes courts to issue a joint custody implementation order. 9 La. Rev. Stat. Ann. § 335 (West 2006).

Mr. Vincent explains that in addition to having joint custody of Shaun-Michael, he also pays for all of the boy's living expenses.

Mr. Vincent happened to have custody of Shaun-Michael on August 27, when evacuation of New Orleans was necessary. The boy stayed with him until August 30. Shaun-Michael resided with his mother from then until September 2, when Mr. Vincent regained custody. Mr. Vincent and his ex-wife then established a pattern under which each of them had custody of Shaun-Michael for almost exactly half the nights during each of the next six months (except for December, when the mother became ill and Shaun-Michael stayed with his father for an entire week). As part of this pattern, Mr. Vincent appears to have actually had custody for a majority of the time: because the mother was working full-time and going to school in the evenings, even when she assumed physical custody for the night, the boy stayed with Mr. Vincent until 9 p.m.

Discussion

The Office of Personnel Management (OPM) has authorized agencies to pay, as a special allowance, travel expenses and a per diem allowance to employees who must be evacuated from their duty stations and dependents of those employees. Subsistence expenses for evacuated employees and their dependents are to be paid in accordance with the Federal Travel Regulation (FTR). These expenses are to be paid at applicable rates, using the FTR's "lodgings-plus per diem system," for the safe haven or a station other than the safe haven which has been approved by appropriate authority. This special allowance may continue for as long as 180 days after the effective date of the order to evacuate. 5 CFR 550.405 (2005).

The issue in this case is whether Shaun-Michael is a dependent of Mr. Vincent for the purpose of this regulation, and therefore eligible for a subsistence allowance during the period of time after the evacuation.

Under the OPM rules, "Dependent means a relative of the employee residing with the employee and dependent on the employee for support." The FTR does not define the term "dependent," but it does contain a definition of "immediate family" which is congruent with the OPM definition of "dependent":

Immediate family – Any of the following named members of the employee's household at the time he/she reports for duty at the new permanent duty station or performs other authorized travel involving family members: (b)

Children of the employee or employee's spouse who are unmarried and under 21 years of age or who, regardless of age, are physically or mentally incapable of self-support. (The term 'children' shall include natural off-spring. . . .)

41 CFR 300-3.1. This definition is useful for our analysis because it is incorporated in a definition contained in SSA agency rules:

Family. With respect to emergency travel, "family" includes any member of the traveler's immediate family, as defined in Federal Travel Regulation (FTR) 300-3.1. However, SSA may, on a case-by-case basis expand this definition to include other members of the traveler's and/or the traveler's spouse's extended family.

AIMS FMM § 07.14.02.

SSA's travel management office asked for the opinions of two other offices as to whether Shaun-Michael should be considered a dependent of Mr. Vincent for the purpose of granting a subsistence allowance. The office within the General Services Administration which is responsible for the FTR opined that if an employee has only weekend custody of his children, the children are not members of his "immediate family" for the purposes of the FTR. Mr. Vincent objected that while this interpretation makes sense, it does not apply to his situation.

The SSA travel management office then asked the SSA Office of General Counsel (OGC) to examine the matter. The OGC responded:

If [the facts to which the employee attests regarding the joint custody arrangement are] verified, then it is our opinion that the employee's son falls within the definition of 'immediate family,' and the employee would be entitled to reimbursement for special travel and subsistence expenses incurred while his son was in his custody.

The OGC found especially helpful the decision of the Comptroller General, who used to settle travel and relocation expense claims made by federal employees, in *Ernest P. Gianotti*, 59 Comp. Gen. 450 (1980). The Comptroller General held in *Gianotti* that whether a child of an employee who has a divided right to custody is a member of his "immediate family," and therefore eligible for travel allowances, is dependent on the facts of each particular case. There, a child who was in the custody of an employee for several months each year, including the time when the employee traveled to an overseas post, was considered to be a member of the employee's "immediate family" and thus eligible for allowances. Applying

the teachings of *Gianotti*, the OGC concluded, “[I]n Mr. Vincent’s case, his son resided with him for three nights out of a week, plus the majority of holidays, and with his ex-spouse for four nights out of the week, which appears to be of a sufficient duration to warrant a determination that his son was a member of his household.”

In our view, the SSA OGC analyzed the matter correctly. Mr. Vincent had joint custody of Shaun-Michael, including physical custody for approximately half the time, and paid for all of the boy’s living expenses. Applying *Gianotti*, which we find persuasive, it is an easy call to say that Shaun-Michael is a dependent of Mr. Vincent -- a member of his immediate family -- and therefore eligible for the special subsistence allowance accorded to evacuated employees and their families.

Our opinion addresses only the question of entitlement. As to the amount which Mr. Vincent should receive, to cover Shaun-Michael’s expenses, we join the SSA travel management office in failing to comprehend how the claimed amount of \$1791.63 has been calculated. We note that the travel management office thinks that if entitlement is found, the amount to be paid should be \$2626.73. We do not know whether this figure is correct, either, but leave to the agency the task of determining the right number in the first instance. If Mr. Vincent disagrees with SSA’s determination as to amount, he is free to file another case challenging that determination.

STEPHEN M. DANIELS
Board Judge