



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

January 22, 2009

CBCA 1370-RELO

In the Matter of ZAKI M. SAAD

Zaki M. Saad, Sterling, VA, Claimant.

Robin M. Fields, Office of the Chief Counsel, Federal Highway Administration, Washington, DC, appearing for Department of Transportation.

BORWICK, Board Judge.

In this case, Mr. Zaki Saad, claimant, an employee of the Department of Transportation, Federal Highway Administration (FHWA), agency, challenges the agency's denial of reimbursement of \$5000 of costs incurred before a permanent change of station (PCS) was canceled. We sustain the agency's denial as it correctly applied the Federal Travel Regulation (FTR). Had the PCS occurred, claimant would not have been entitled to reimbursement for the claimed expenses under a specific entitlement in the FTR or under the miscellaneous expense allowance (MEA) of the FTR. Consequently, he is not entitled to reimbursement of those expenses when the PCS was canceled.

Background

Anticipated transfer

On December 15, 2006, the agency confirmed claimant's temporary promotion for a period not to exceed two years to a position in the Office of International Programs (OIP), FHWA, with the duty location in Kuwait City. The agency advised claimant that the "effective date of [claimant's] temporary promotion and assignment to Kuwait City pending appropriate country clearances is tentatively scheduled for February 18, 2007." Presumably he was to be part of an agency team assisting Kuwait in road and bridge construction. The

agency advised that relocation matters would be handled by the Federal Aviation Administration offices in Oklahoma, City, Oklahoma.

On January 12, 2007, the agency issued a PCS authorization granting, among other benefits, transportation of claimant and his family, non-temporary storage of 18,000 pounds of household goods (HHG), air shipment of seven hundred pounds of HHG, surface shipment of 7200 pounds of HHG, and ten days of pre-departure temporary quarters subsistence expense (TQSE). The authorization stated a duty reporting date of February 21, 2007, with travel to begin on February 18, 2007.

On or about January 18, 2007, claimant told the agency in an electronic mail message that the dates for the move were unrealistic, and that as of the date of the electronic mail message, he had no contact from the agency's international office, the security office, or the medical clinic for clearances. He stated that he had "no clue" who was in charge of the program or what he was supposed to do. On the same day, the agency responded that the OIP was working with agency leadership to determine the actual deployment date and that the date on the PCS travel orders was optimistic. The agency advised that the date shown on the travel orders would be changed and the orders amended once the actual deployment date was decided.

During the month of February 2007, claimant and his family were busy obtaining security clearances and passport documentation. On February 26, 2007, claimant advised the agency that after receipt of the clearances and passports, as well as medical check-ups for him and his family, he would be ready to move to Kuwait on April 11. In response, on that same day, the agency stated that it had encountered "some problems" with selected staff obtaining clearances and advised claimant to keep in contact with the agency's human resources office for further information.

On March 15, the agency approved claimant's security clearance; on March 22, the agency provided claimant with diplomatic passports. On March 15, the agency also issued to claimant its first amended PCS order with a new reporting date in Kuwait of April 20, 2007.

On March 27, claimant advised the agency of his anticipated travel date of May 1 and his arrival in Kuwait on May 2. On that date, the agency issued a second amended PCS order reflecting claimant's travel and arrival plans in Kuwait. The agency also granted claimant thirty days of TQSE at his new duty post.

On March 30, claimant advised the agency that his present employing office was inquiring about his relocation because it was in the process of filling his soon-to-be vacated

position. Claimant asked whether there was a chance of his not relocating as planned. The agency advised that the Kuwaiti officials were adamant about meeting with the American team before deployment and that those officials would not be in the United States until June or July. The agency told claimant that his relocation was “on hold” and that it would work with personnel at his old office to keep claimant in his old position at least until the Kuwaiti officials had conducted their interviews.

On July 9, the agency scheduled the individual interviews by the Kuwaiti officials for July 30 and 31. On August 3, by electronic mail message, the Acting Director of the OIP advised the Special Assistant to the Administrator of the FHWA that those officials had approved five of the six persons interviewed. On August 8, claimant advised the human resources office assisting him in his relocation that his relocation had been postponed indefinitely.

On August 17, the agency advised the prospective members of the agency team that “in the near future” there would be a meeting with the FHWA Administrator to discuss the future of the program in Kuwait and that after the meeting the agency would be “in a better position to advise you all of the details of the deployment and the mission of the program as a whole.” The agency thanked the prospective team members for “their continued patience.”

On December 20 one member of the agency team asked whether there was any further information on the positions in Kuwait. The agency responded that it notified the human resources office that it would not fill any of the advertised positions because “the [Kuwait] Minister and Undersecretary have dramatically changed the nature of our program in Kuwait.” The agency stated, “You should receive an official notice from [human resources] very soon.”

Purchase of goods in anticipation of transfer

Claimant says in January 2007 he commenced conversations with American Embassy employees in Kuwait on the furniture types and sizes that would be provided for claimant’s use in Kuwait. Claimant determined that the sizes of the beds were not consistent with his existing furniture. According to the reimbursement voucher claimant submitted, on or about January 1, 2007, claimant purchased bedding and bathroom sets, school uniforms for his children, and appliances and transformers that were to be used in his residence in Kuwait. However, a credit card statement in the record indicates claimant purchased merchandise

from a variety of retail and on-line outlets between January 8, 2007, and June 20, 2007, totaling \$3649.87.¹

Reimbursement voucher

On March 24, 2008, claimant submitted his reimbursement voucher for \$5110, seeking reimbursement of \$110 for medical and passport photo expenses and \$5000 for “merchandise purchased for use in new location.” Claimant recognized in an undated explanatory memorandum that “under normal circumstances” such merchandise purchases would not be reimbursable, but due to the cancellation of the program and his overseas PCS he was now in possession of goods that were useless to him. Claimant stated that he “did not keep any receipts and the merchandise were over [ninety] days from purchase so we can not return [them].”

On April 7, 2008, the agency approved reimbursement of the \$110 claimed for medical clearance and passport photographs but rejected reimbursement of the \$5000:

It is not our policy to reimburse employees for costs associated with purchases made in anticipation of their move to Kuwait. As mentioned in the correspondence dated December 15, 2006, from our Human Resources office, your temporary promotion and assignment to Kuwait was held pending approval from Kuwait. The Kuwait Ministry of Public Works did not approve your deployment. Subsequently, your transfer to Kuwait and the vacancy announcement were both cancelled. Since the [PCS] did not occur, applying the miscellaneous costs to your travel order, which was never implemented, is not allowed. Your claim for \$5,000 in new merchandise for use in your new location is not approved.

By memorandum received by the agency on April 22, claimant requested the agency to further consider his request. By letter of August 11, the agency confirmed its denial of the \$5000 reimbursement request, but allowed the cost of electricity converters upon claimant’s submission of suitable documentation, since the cost of converters is specifically mentioned as an allowable MEA expense by the FTR. *See* 41 CFR 302-16.1 (2006).

¹ Claimant marked with an “X” those merchandise purchases presumably associated with his anticipated relocation.

Discussion

Our predecessor board in handling these cases, the General Services Board of Contract Appeals (GSBCA), stated the general rule on canceled transfers:

When an agency cancels a transfer due to circumstances beyond an employee's control, it should reimburse the employee for expenses that it would have reimbursed had the transfer been completed, provided the employee incurred the expenses before the agency canceled the transfer, in good faith, and in anticipation of the transfer.

Michael J. Halpin, GSBCA 14509-RELO, 98-1 BCA ¶ 29,730, at 147,384 (citing *Orville H. Myers*, 57 Comp. Gen. 447 (1978); *Dwight L. Crumpacker*, B-187405 (Mar. 22, 1977)); see also *Daniel E. Brown*, GSBCA 15647-RELO, 01-2 BCA ¶ 31,617.

As claimant has recognized, had the transfer to Kuwait been completed, the agency would not have reimbursed claimant for the bedding and bathroom sets, school uniforms, and appliances and transformers purchased for use in Kuwait. Reimbursement for such items is not covered by a specific relocation entitlement of the FTR. Furthermore, reimbursement for these items is not allowed as part of the MEA. The MEA does not reimburse the costs or expenses incurred for reasons of personal taste or preference and not required because of the move. 41 CFR 302-16.202(d). The following are types of costs not covered by the MEA: (1) cost of newly acquired items, such as the purchase or installation cost of new rugs or draperies, *id.* 302-16.203(d); and (2) costs incurred in remodeling of living quarters, such as the purchase of new appliances, *id.* 302-16.203(l). New bedding, school uniforms, and appliances and transformers are newly acquired items, which claimant purchased as a matter of personal preference and are not covered by the MEA.

Furthermore, despite the existence of the travel orders, at least as early as January 18, 2007, it was unclear whether claimant's transfer would actually occur. As early as January 18, the agency advised claimant that his previously established transfer date was tentative and that a firm date would be established later. Although the agency allowed claimant to engage in some pre-transfer activities during the month of February, such as applying for security clearances and diplomatic passports, at the end of February the agency advised claimant of "problems" in obtaining staff clearances creating a further delay in his PCS. Finally, on or about March 30, the agency put claimant's PCS to Kuwait on "hold." The agency did claimant a disservice by not being as forthright as it might have been from the outset about the tentative nature of the assignment to Kuwait, and we understand claimant's frustration. Nevertheless, it should have been clear to claimant by March 30, 2007, that the PCS to Kuwait was uncertain, at best.

Before incurring miscellaneous expenses, an employee is expected to exercise the same care as a prudent person relocating at personal expense. The agency notes that claimant incurred \$2204.84 of expenses in April, May, and June of 2007, after he was notified that the relocation was on hold. Claimant did not act prudently in incurring those expenses.

The agency acted in accordance with the FTR in denying claimant reimbursement of \$5000. The Board sustains the agency's denial.

ANTHONY S. BORWICK
Board Judge