May 10, 2007

CBCA 555-TRAV

In the Matter of BRADLEY P. BUGGER

Bradley P. Bugger, Pocatello, ID, Claimant.

Patricia J. Hodson, Director, Office of Financial Policy, Department of Energy, Washington, DC, appearing for Department of Energy.

PARKER, Board Judge.

Background

Bradley P. Bugger, an employee of the Department of Energy (DOE) in Idaho Falls, Idaho, was sent on a three-month temporary duty (TDY) assignment to Washington, D.C., in May 2006. Before leaving, Mr. Bugger was told by his supervisor that he was entitled to two trips home during the assignment. Mr. Bugger was also told that, instead of going home both times, he could substitute one trip to Las Vegas, Nevada, to meet his wife to celebrate their anniversary and another to Albany, New York, to visit his brother. The approval was granted on the basis that the cost of the airfare to the substitute locations was $932 cheaper than the cost of the airfare for the two trips back to Idaho.

After returning from the TDY assignment, Mr. Bugger was reimbursed for both substitute airline tickets -- but then received a bill in the mail for $1875.30, the cost of the tickets. The explanation for the bill was that government travel regulations did not permit travel to the alternate locations. Mr. Bugger has asked the Board to review the agency's decision to deny reimbursement for the tickets.

Discussion

Although the agency did Mr. Bugger a disservice in advising him that he could go to Las Vegas and Albany instead of returning home, the agency's ultimate determination that it lacked authority to pay for the tickets was correct. The Federal Travel Regulation provides:

> Your agency may authorize per diem or actual expenses and round-trip transportation expenses for periodic return travel on non-workdays *to your home or official station* . . . [when p]eriodic return travel is justified incident to an extended TDY assignment.

41 CFR 301-11.27 (2006) (emphasis added). Department of Energy regulations are to the same effect:

> An employee who is required to perform extended TDY in excess of 30 days may be authorized round-trip transportation expenses and per diem en route for periodic return travel *to his or her official duty station or place of abode* for nonworkdays.

DOE M 552.1-1A (DOE 301-11.21(c)) (Feb. 17, 2006) (emphasis added).

Unfortunately, the fact that Mr. Bugger was initially advised that his airfare would be reimbursed makes no difference. Only expenses authorized by statute or regulation may be reimbursed, because allowing an agency to make a payment in the absence of such authority would violate the Appropriations Clause of the Constitution. The Supreme Court consequently has made clear that an executive branch employee's promise that the Government will make an "extrastatutory" payment is not binding. *Office of Personnel Management v. Richmond*, 496 U.S. 414 (1990); *Federal Crop Insurance Corp. v. Merrill*, 332 U.S. 380 (1947)*;* see *Bruce Hidaka-Gordon*, GSBCA 16811-RELO, 06-1 BCA ¶ 33,255; *Teresa M. Erickson*, GSBCA 15210-RELO, 00-1 BCA ¶ 30,900.

Under applicable regulations, the agency had authority to pay for trips home, not to alternate destinations, and notwithstanding Mr. Bugger's arguments to the contrary, a vacation to Las Vegas with his wife and a trip to Albany to visit his brother are not the same thing as a trip home. Accordingly, although Mr. Bugger was misled by his well-meaning supervisor, the agency properly refused to reimburse him for the cost of the tickets.

All may not be lost, however. Although the agency may not reimburse Mr. Bugger for his transportation costs, the agency should, upon the filing of a proper voucher, reimburse

him for lodging and per diem costs he incurred in Las Vegas and Albany, up to the maximum amount allowed at the TDY location. This is because an employee who, instead of traveling home on non-work days, travels to a different location, is considered to be still on TDY. *Frank A. Condino*, GSBCA 16365-TRAV, 04-02 BCA ¶ 32,682; *see* 41 CFR 301-11.21.

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ROBERT W. PARKER
Board Judge