



UNITED STATES  
CIVILIAN BOARD OF CONTRACT APPEALS

---

March 21, 2007

CBCA 527-RELO

In the Matter of DONALD R. KINCAID

Donald R. Kincaid, Navarre, FL, Claimant.

Tara Scavo, Office of Chief Counsel, Bureau of Alcohol, Tobacco, Firearms and Explosives, Washington, DC, appearing for Department of Justice.

**PARKER**, Board Judge.

Background

Prior to his retirement in September 2004, Donald R. Kincaid served as Special Agent in Charge of the Los Angeles, California, Field Division of the Department of Justice's Bureau of Alcohol, Tobacco, Firearms and Explosives (ATFE), a Senior Executive Service (SES) position. Mr. Kincaid's wife, Lisa Kincaid, was then and still is an ATFE Special Agent.

When Lisa Kincaid applied for the position of Resident Agent in Charge of the ATFE's Pensacola, Florida, office, Donald Kincaid told his immediate supervisors that if she was selected for the position and her relocation expenses were paid in full, he would forego any entitlement he might have to SES-related "last move home" relocation funding. Lisa Kincaid was selected for the position in June 2004 and was authorized full relocation allowances. The couple moved in August 2004; Donald Kincaid retired in September.

Because the Kincaids' household goods weighed more than the allowable limit of 18,000 pounds, Lisa Kincaid was billed for excess weight charges in the amount of \$4052.83. The Kincaids were surprised that their goods weighed so much and, to avoid having to pay the additional charge, Mr. Kincaid sought to invoke his SES last move home benefits. The agency denied Mr. Kincaid's request on the basis that he failed to apply and

receive agency approval for these benefits prior to moving as required by the Federal Travel Regulation (FTR), which was in accordance with his agreement with the agency to forego such benefits. Mr. Kincaid feels that, by declining to pay the excess weight charges, the ATFE failed to live up to its agreement to pay for Lisa Kincaid's moving expenses "in full," and he has asked the Board to review the agency's decision to deny him SES last move home benefits.

### Discussion

Certain career SES appointees who have been transferred in the interest of the Government are entitled, upon their retirement, to "last move home" benefits -- travel and transportation expenses, a mileage allowance for travel by privately-owned automobile, and costs of transportation and temporary storage of household goods. 5 U.S.C. § 5724(a)(3) (2000). The statute is implemented by the FTR in regulations found at 41 CFR 302-3.304 to -3.315 (2004). Regarding advance notification, the FTR provides:

#### **Do I have to provide my agency with any special documents before receiving reimbursement for moving expenses?**

Yes, before receiving reimbursement for moving expenses, you must submit a request to your agency for authorization and approval of your moving expenses with your tentative moving dates and the origin and destination location of your planned move, within the timeframe and format specified by your agency.

41 CFR 302-3.307.

Mr. Kincaid acknowledges that he did not request and receive advance approval for SES last move home benefits but states that he did this on the basis of an agreement with the agency to pay in full for his wife's relocation, an agreement that he claims the agency breached by declining to pay transportation charges for his family's household goods in excess of 18,000 pounds. We hold that Mr. Kincaid's request did come too late and, further, that the agency did live up to its agreement.

When an agency transfers an employee in the interest of the Government from one permanent duty station to another, it must pay for the expenses of transporting 18,000 pounds, but no more, of the employee's household goods and personal effects. 5 U.S.C. § 5724(a)(2); 41 CFR 302-7.2. The cost of transporting additional goods is the responsibility of the employee. *Alan Poleszak*, GSBCA 16693-RELO, 05-2 BCA ¶ 33,066; *James R. Wyatt, Jr.*, GSBCA 16038-RELO, 04-1 BCA ¶ 32,573 (citing *George W. Currie*,

GSBCA 15199-RELO, 00-1 BCA ¶ 30,814; *Robert K. Boggs*, GSBCA 14948-RELO, 99-2 BCA ¶ 30,491).

By paying for the expenses of transporting to Florida 18,000 pounds of the Kincaids' household goods -- the legal limit -- the agency did pay "in full." Certainly, neither Mr. Kincaid nor the agency could reasonably have expected otherwise at the time of the agreement. As an experienced and well-traveled federal employee, Mr. Kincaid should have been well aware of the weight limitation. Although it is true, as Mr. Kincaid points out, that he could have requested last move home benefits instead of traveling as Mrs. Kincaid's dependent, he chose not to do so. It is too late now to alter that choice.

#### Decision

The claim is denied.

---

ROBERT W. PARKER  
Board Judge