



UNITED STATES  
CIVILIAN BOARD OF CONTRACT APPEALS

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June 1, 2012

CBCA 2842-RELO

In the Matter of JUSTIN M. KEARNS

Justin M. Kearns, Denver, CO, Claimant.

David G. Achterberg, Director, Safety, Security, and Law Enforcement, Bureau of Reclamation, Department of the Interior, Denver, CO, appearing for Department of the Interior.

**GOODMAN**, Board Judge.

The agency has submitted this claim on behalf of claimant, Justin M. Kearns, an employee of the Department of the Interior, seeking review of denial of relocation costs incurred by claimant when he was hired by the agency.

Factual Background

Claimant was hired by the agency as a new appointee in 2010. The agency represented to claimant that he would be entitled to reimbursement of various relocation costs if he accepted the offer of employment. Claimant accepted the position and relocated. Approximately thirty days after he entered on duty, claimant was notified by the agency that he had been erroneously offered reimbursement of costs available only to transferred employees, and not available to new appointees. The agency subsequently reissued his travel orders, including the notation "no sale or purchase of home authorized."

Claimant submitted two travel vouchers, seeking reimbursement of costs incurred for temporary quarters subsistence expense (TQSE) and real estate expenses relating to the sale of his residence where he resided before he entered on duty and the purchase of a residence at his duty station. The agency denied reimbursement of the costs sought, on

the basis that new appointees are not entitled to reimbursement for TQSE and real estate expenses when relocating to begin federal employment.

The agency admits that claimant was erroneously advised that he would receive relocation benefits to which new appointees are not entitled. Even so, the agency official submitting the claim on claimant's behalf urges the Board to grant entitlement to claimant for these costs, as he alleges the agency could have structured the offer of employment to include other incentives available to new appointees had the error been realized before claimant accepted the erroneous offer and reported for duty. Claimant states that had the reimbursement of TQSE and real estate expenses not been offered to him, he may have chosen not to take the position.<sup>1</sup>

### Discussion

New appointees cannot receive reimbursement for costs to which they are not entitled by law or regulation. *Roscoe C. Howard, Jr.*, GSBCA 16181-RELO, 04-1 BCA ¶ 32,435 (2003). The Federal Travel Regulation (FTR) explicitly states that new appointees are not eligible to receive TQSE and reimbursement of real estate expenses when they relocate to begin federal employment. 40 CFR 302-6.5, -11.4 (2010).

This Board has held that it is settled that new employees are entitled to limited benefits that do not include reimbursement of TQSE or real estate expenses. *William Arnold Kristapovich*, CBCA 2390-RELO, 11-2 BCA ¶ 34,826. An agency's erroneous authorization of these expenses creates no entitlement of the employee to payment of these expenses. *William Arnold Kristapovich*; see also *Evester Edd*, CBCA 1582-RELO, 09-2 BCA ¶ 34,232; *Maxia Dong*, CBCA 733-RELO, 07-2 BCA ¶ 33,626.

### Decision

The claim is denied.

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ALLAN H. GOODMAN

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<sup>1</sup> We determine entitlement to reimbursement of relocation costs based on actual circumstances. The parties' suggestion as to how this dispute could have been avoided is not relevant. *Roger G. Greening*, GSBCA 13924-RELO, 97-1 BCA ¶ 28,883; *Harlan C. Thiel*, GSBCA 13668-RELO, 97-1 BCA ¶ 28,710 (1996)

Board Judge