



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

November 26, 2012

CBCA 2701-RELO

In the Matter of AMIE S. CLARKE

Amie S. Clarke, Springfield, VA, Claimant.

James E. Hicks, Office of Chief Counsel, Drug Enforcement Administration, Department of Justice, Springfield, VA, appearing for Department of Justice.

ZISCHKAU, Board Judge.

On July 26, 2012, we granted the claim of Amie S. Clarke, concluding that Ms. Clarke was entitled to be reimbursed the forfeited non-refundable school registration fees she paid for her minor children, subject to the two-week basic gross pay limitation of section 302-16.103(b)(2) of the Federal Travel Regulation (FTR), 41 CFR 302-16.103(b)(2) (2011) (FTR 302-16.103(b)(2)), because the fees were a reimbursable miscellaneous expense similar to other types of non-refundable contract fees. The agency moves for reconsideration, arguing that the agency exercised its discretion in declining to reimburse Ms. Clarke's forfeited educational contract fee based on its agency policy even if the FTR permitted the agency to reimburse these expenses.

We deny the motion for reconsideration because the agency did not argue in the original proceedings that its policy excluded non-refundable school registration fees from permissible miscellaneous expenses under FTR 302.16.2. Rather than arguing that such expenses were not authorized by agency policy, the agency argued that the FTR did not permit reimbursing these expenses. The agency does not challenge on reconsideration our decision that the FTR permits reimbursing such expenses, but argues for the first time that its policy does not permit such a reimbursement. The agency has not shown any just cause for its failure to raise the issue and submit its policy provisions in the original proceedings.

In any event, our review of the policy excerpts furnished by the agency in its reconsideration request confirms our merits decision. The agency's policy makes no mention

at all regarding any exclusion of non-refundable school or education contract expenses. To the contrary, the policy allows for reimbursement of miscellaneous expenses consistent with the FTR. Indeed, the policy handbook supports the reimbursement of the non-refundable registration fees claimed by Ms. Clarke. The handbook states in relevant part:

Some costs which are reimbursable under the allowance include . . . [f]orfeiture losses on medical, dental, and other service contracts that are not transferable; and contracts for private institutional care such as that provided for handicapped or invalid dependents only, which are not transferable or refundable

Agency's Reconsideration Request, Exhibit 1. The policy states that to claim the actual miscellaneous expenses paid out of pocket, the employee must submit documentation supporting the expenses which exceed the "flat" amount, including "receipts for the total amount being claimed." Ms. Clarke submitted proper documentation including receipts for the non-refundable contract amounts she paid.

The agency has demonstrated no error of fact or law in our decision. Accordingly, its motion for reconsideration is denied.

JONATHAN D. ZISCHKAU
Board Judge