UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

August 10, 2012

CBCA 2581-RELO

In the Matter of JAMES L. HOLLINGSWORTH

James L. Hollingsworth, APO Area Europe, Claimant.

Thomas Rittershofer, Civilian Personnel Programs Branch, Directorate of Manpower, Personnel and Services, Department of the Air Force, APO Area Europe, appearing for Department of the Air Force.

McCANN, Board Judge.

Claimant, James L. Hollingsworth, a civilian employee of the Department of the Air Force (agency or Air Force) stationed in Aviano, Italy, seeks review of the Air Force's denial of living costs he incurred incident to his relocation to Italy after his retirement from active duty. Because none of the applicable travel regulations permit the reimbursement of Mr. Hollingsworth's claimed costs, we affirm the agency's decision and deny his appeal.

Background

James L. Hollingsworth is a supervisory food and beverage specialist employed by the Air Force at Aviano Air Base, Italy. He began working in this position on May 23, 2011. Prior to holding this civilian position, Mr. Hollingsworth served as an active-duty member of the Air Force from August 1, 1986, until his retirement on March 31, 2011. At the time of his retirement, Mr. Hollingsworth was stationed in the United Kingdom.

Mr. Hollingsworth seeks reimbursement in the amount of $415 for temporary lodging incurred for a ten-day period prior to his departure from the United Kingdom for Italy. He had been informed orally that he was eligible to receive ten days of living quarters allowance prior to leaving the United Kingdom. His orders indicate that temporary quarters subsistence

allowance (TQSA) "may be authorized," and that temporary quarters subsistence expense (TQSE) is not authorized. The Air Force denied his request, and Mr. Hollingsworth appealed to the Board.

It is undisputed that during the two-month gap between his retirement from active duty and the beginning of civilian employment, Mr. Hollingsworth was entitled to return home to the United States at taxpayers' expense. He declined to do so, remaining instead in England at his own expense. As the Air Force concedes, that decision "saved the Government a significant amount of money."

Discussion

The Air Force contends that Mr. Hollingsworth is not entitled to reimbursement for his ten days of lodging because no regulation allows such recovery. The Air Force is correct. Mr. Hollingsworth's orders clearly indicate that the recovery of TQSE is not authorized. Additionally, the Federal Travel Regulation (FTR) expressly reserves TQSE for an employee moving to a new official duty station located within the United States. 41 CFR 302-6.4(a) (2010). Furthermore, under the FTR, TQSE is not available to new appointees. 41 CFR 302-6.5; *Charles M. Russell*, GSBCA 16000-RELO, 03-1 BCA ¶ 32,176. A new appointee is an individual "who is employed with the Federal Government for the very first time." 41 CFR 302-3.1(a). Since Mr. Hollingsworth retired from active duty before he took this job as a civilian employee in Italy, he is a new appointee. *See John B. Smith*, GSBCA 15319-RELO, 01-1 BCA ¶ 31,338, at 154,771. The expenses that a "new appointee" may recover are limited in comparison to the expenses that an employee may recover. *See generally Barry McGuire*, GSBCA 15346-RELO, 01-1 BCA ¶ 31,343, at 154,779-80.

The only way that Mr. Hollingsworth might be able to recover would be as a new appointee under the Department of State Standardized Regulations (DSSR). New appointees assigned to a first official station outside the continental United States may recover certain costs under the foreign travel allowance (FTA) or the TQSA of the DSSR. 41 CFR 302-3.2 (tbl. B, col. 2, no. 2). Under this regulation, the agency has discretionary authority to reimburse pay a new appointee these allowances. *Id.*

With regard to TQSA, we note that the DSSR, even under the facts of this case, do not permit reimbursement of Mr. Hollingsworth's claimed costs. The DSSR allows TQSA to begin no earlier than the date upon which the claimant "arrives at a new post." DSSR 123.1(a). Because Mr. Hollingsworth had not arrived at his new post in Italy at the time he incurred the costs for which he seeks reimbursement, he is not entitled to recover TQSA.

With regard to potential payment under the FTA, the DSSR again does not permit reimbursement. Predeparture subsistence expenses such as lodging and meals may be recoverable for up to ten days prior to "departure from a post in the United States to a post in a foreign area . . . ." DSSR 241.2 c. Since Mr Hollingsworth was not departing from a post in the United States, but was departing from the United Kingdom, he may not be reimbursed predeparture subsistence expenses.

It is unfortunate that we must deny Mr. Hollingsworth's claim. Like the officials at the Air Force, we recognize that Mr. Hollingsworth might have acted with the best of intentions by deciding to remain in the United Kingdom before relocating to Italy, a decision that subsequently saved the Government a significant amount of money. Be that as it may, the fact that Mr. Hollingsworth acted with good intentions does not permit the Government to reimburse expenses that are not authorized by law or regulation. It is well-established that the "Government may not spend money in violation of statute or regulation." *Kevin S. Foster*, GSBCA 13639-RELO, 97-1 BCA ¶ 28,688 (1996) (citing *Office of Personnel Management v. Richmond*, 496 U.S. 414 (1990); *Federal Crop Insurance Corp. v. Merrill*, 332 U.S. 380 (1947)).

Decision

For the foregoing reasons, the claim is denied.

R. ANTHONY McCANN
Board Judge