UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

April 23, 2008

CBCA 928-TRAV

In the Matter of MICHAEL C. BIGGS

Michael C. Biggs, Sacramento, CA, Claimant.

Eric Colin Crane, Office of the Chief Counsel, United States Citizenship and Immigration Services, Washington, DC, appearing for Department of Homeland Security.

HYATT, Board Judge.

Michael C. Biggs, claimant, has requested the Board's review of a decision by his agency, the United States Citizenship and Immigration Services (USCIS), to disallow his claim for reimbursement of the expense of shipping his privately owned vehicle (POV) from his permanent residence in the Washington, D.C., area to San Francisco, California, in connection with a four-month temporary duty assignment.

Background

In November 2006, Mr. Biggs was employed in the USCIS Office of Policy and Strategy in Washington, D.C. He volunteered to participate in a temporary duty (TDY) assignment with the USCIS Office of Chief Counsel in San Francisco, California. The San Francisco office was at that time experiencing a surge in litigation.

The assignment in San Francisco was authorized for four months with the possibility of an extension. The Office of Chief Counsel's administrative officer had responsibility for initiating and approving travel requests for the Office of Chief Counsel. Mr. Biggs inquired what manner of transportation he would be provided while on TDY and it was determined that the shipment of his POV to San Francisco would represent a saving to the Government given the length of time of the detail. Accordingly, the administrative officer instructed Mr. Biggs to ship his POV to San Francisco for the assignment. Mr. Biggs' initial voucher,

which included the cost of shipping the vehicle to San Francisco, was approved and paid. His final voucher, which included the cost of shipping the vehicle back to Washington, D.C., upon completion of the assignment was challenged by the agency. The agency explains that while it regrets the erroneous instruction given to Mr. Biggs, it has no authority to ship a POV at Government expense in conjunction with an employee's TDY assignment.

Discussion

This issue has been fully addressed in two decisions issued by the General Services Administration Board of Contract Appeals (GSBCA), our predecessor in deciding federal civilian employee travel and relocation claims. *Patrick J. Truver*, GSBCA 16514-TRAV, 05-1 BCA ¶ 32,854 (2004); *Rebecca L. Kalamasz*, GSBCA 15971-TRAV, 04-1 BCA ¶ 32,463 (2003). As explained in these cases, entitlements for reimbursement of travel and transportation costs for federal employees are determined by statute and regulation for two categories of travel: (1) temporary duty at a location away from the employee's official post of duty, *see* 5 U.S.C. §§ 5701-5706 (2000), and (2) relocation from one permanent post of duty to another, *see* 5 U.S. C. §§ 5721-5729. The implementing regulations are set forth in the Federal Travel Regulation (FTR).

Specifically, an agency may authorize reimbursement of the expenses of shipping a POV in conjunction with a permanent change of station, but lacks similar authority for a TDY assignment. As we have stated previously, the only exception is in the case of a temporary change of station (TCS), which may be permitted in the case of a temporary duty assignment that is contemplated to extend for a period of not less that six months and not more than three years. *Truver*; *Kalamasz*. This exception does not appear to be applicable here, since the initial term of TDY was only four months. Thus, under applicable rules and decisional law, USCIS was not authorized to pay the cost of shipping Mr. Biggs' POV to his TDY location.

Claimant offers a number of rationales that he believes justify a departure from the *Truver* and *Kalamasz* decisions. He starts with the argument that on January 5, 2007, the GSBCA was dissolved and, on January 6, 2007, incorporated, along with a number of other civilian agency boards, into the Civilian Board of Contract Appeals. He states that the legislation providing for board consolidation did not preserve any binding or precedential authority for prior decisions of the GSBCA. He further expresses the opinion that the new civilian board has the authority to make equitable decisions in interpreting the travel regulations.

Claimant is mistaken in his position that the CBCA may and should depart from the body of precedent established by the GSBCA and decide travel and relocation cases

differently than in the past. The GSBCA and, after January 5, 2007, this Board, were authorized to hear these cases under a delegation of authority from the Administrator of General Services pursuant to 31 U.S.C. § 3702(a)(3). That delegation did not change substantively as a result of the consolidation. On January 18, 2007, the CBCA issued *Business Management Research Associates, Inc. v. General Services Administration*, CBCA 464, 07-1 BCA ¶ 33,486, which held that holdings of predecessor boards shall be binding as precedent in the CBCA. Although this decision addressed cases filed under the Contract Disputes Act of 1978, 41 U.S.C. §§ 601-613, the rationale that prior relevant decisions of predecessor organizations should be followed by the CBCA applies to travel and relocation claims as well. Moreover, the Board is charged only with interpreting and applying the pertinent regulations; if a particular expense is simply not authorized by law, the Board has no more authority than the agency to permit its reimbursement.

Claimant next urges that he is entitled to be reimbursed because he reasonably relied on the actions and instructions of an official who he believed had more familiarity with pertinent regulations than claimant had. This argument does not advance claimant's cause. The Board has consistently recognized that the Government is not bound by the erroneous advice of its officials and that an employee's reliance on such advice does not afford a basis upon which relief may be granted to a claimant. *E.g.*, *Bruce Bryant*, CBCA 901-RELO, 08-1 BCA ¶ 33,737(2007); *Manuel S. Figueroa*, CBCA 486-TRAV, 07-1 BCA ¶ 33,540.

Claimant further asserts that it was financially more advantageous to the Government to ship his POV to the TDY station. He contends that the cost of a rental car for the duration of his TDY would have been significantly more costly than the expense incurred in shipping his POV. Nonetheless, the fact that an action is taken with the good intention to save the Government money does not permit payment of an expense that is otherwise unauthorized. *See, e.g.*, *Gene Kourtei*, CBCA 793-RELO, 08-1 BCA ¶ 33,724(2007); *James L. Landis*, GSBCA 16684-RELO, 06-1 BCA ¶ 33,225; *Panfilo Marquez*, GSBCA 15890-TRAV, 03-2 BCA ¶ 32,394; *Lorna J. LaRoe-Barber*, GSBCA 14890-TRAV, 99-2 BCA ¶ 30,484.

Similarly, claimant misapprehends the application of a constructive cost analysis to determine the reimbursement due to an employee who uses a POV in connection with TDY. 41 CFR 301-10.309 (2006). That analysis is applicable when an employee chooses to perform the travel necessary to proceed to the TDY destination by POV, rather than use the authorized mode of transportation. *See William T. Cowan, Jr.*, GSBCA 16525-TRAV, 05-1 BCA ¶ 32,906. Here, claimant was authorized to travel and did travel to San Francisco via commercial air carrier. It would serve no purpose to perform a constructive cost analysis to compare the cost of the commercial air fare with the cost of traveling to San Francisco by POV, as the regulations contemplate.

Finally, claimant cites a GSBCA decision for the proposition that once the Government authorizes an expenditure it cannot revoke the authorization to the detriment of the employee. This case, *Jack W. Tucker*, GSBCA 16929-TRAV, 06-2 BCA ¶ 33,432, has no application to the claim at hand. In *Tucker*, the Board addressed the well-established rule that if an agency authorizes expenses it has the discretion to approve, it cannot, after the fact, revoke that approval once the expense has been incurred. This is distinctly different from the present claim, which is governed by the principle that the Government cannot approve reimbursement of an expense it had no authority to incur.

Decision

The claim is denied.

CATHERINE B. HYATT
Board Judge