UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

May 3, 2007

CBCA 526-RELO

In the Matter of GARY L. DISSETTE

Gary L. Dissette, Bettendorf, IA, Claimant.

Willie Smith, Assistant Chief of Staff for Resource Management, Headquarters, Army Sustainment Command, Rock Island Arsenal, Rock Island, IL, appearing for Department of the Army.

HYATT, Board Judge.

Background

In June 2000, claimant, Gary L. Dissette, a civilian employee of the Department of the Army, transferred from the Crane Army Ammunition Activity in Indiana to Germany, where he worked for the Army Audit Agency. Mr. Dissette had return rights to the Crane base.

In 2004, claimant was preparing to return to Crane. To assist with this process, Mr. Dissette was provided a set of permanent change of station (PCS) materials from the Army Audit Agency in Germany. The Joint Travel Regulations (JTR) were referred to in these materials. Claimant looked up the pertinent regulations and noted that one of the provisions on reimbursements provided a table showing that an employee relocating from an overseas assignment to an official duty station within the continental United States other than the duty station from which he or she had originally been transferred overseas, would be entitled to reimbursement of real estate transaction expenses and the miscellaneous expense allowance.

While Mr. Dissette was planning his return to Indiana, he learned of, and applied for, a position as an accountant for the United States Army Field Support Command located in Rock Island, Illinois. The vacancy announcement posted for this opening stated that "[p]ermanent change of station (PCS) expenses are not authorized." When he was offered

the position at the Rock Island Arsenal, claimant attempted to clarify with Rock Island personnel whether he would be eligible for reimbursement of real estate transaction expenses if he transferred to the Rock Island Arsenal instead of returning to Crane. He specifically raised the JTR provision that suggested to him that these are mandatory entitlements, and asked how this provision would be reconciled with the job announcement's contradictory statement. Mr. Dissette did not receive an explanation, but was simply told that he "had a choice to make – take the job or not."

Claimant's initial travel orders were issued in December 2004 by Crane Army Ammunition Activity for his return to the official station in Crane, Indiana. These orders provided for payment of return right expenses -- most significantly, air travel for claimant and his family and transportation of household goods. The orders did not authorize real estate expenses or a miscellaneous expense allowance. When Mr. Dissette accepted the position at the Rock Island Arsenal, the orders were amended to show that claimant would report directly to the new official station at Rock Island. His report date of January 23, 2005, was unchanged and authorized expenses remained the same. Travel vouchers were processed by the Crane Army Ammunition Activity.

After Mr. Dissette arrived at his new official duty station, he decided to pursue with his command reimbursement of real estate transaction expenses and a miscellaneous expense allowance. After consulting with the Defense Finance and Accounting Service (DFAS), the command advised that his only entitlement was to the expenses required to be paid in conjunction with his return to the continental United States from the overseas assignment. These entitlements did not include real estate expenses and the miscellaneous expense allowance.

The command also recommended that claimant present a voucher to DFAS and, if it was rejected, seek review from the Board. Mr. Dissette submitted his claim to DFAS and spoke with two individuals at DFAS who, he states, gave him conflicting advice. DFAS did not approve the voucher. The command reaffirmed its position that, in light of the terms of the vacancy announcement, Mr. Dissette is not eligible for the expenses he seeks. Mr. Dissette has asked the Board to review this decision.

Discussion

Claimant's position is predicated on his reading of paragraph C5010 of the JTR that was in effect when he transferred to Rock Island, Illinois. This provision contains various eligibility and allowance tables for designated assignments, transfers and moves for civilian employees within the Department of Defense. Table 6 applies to transfers from an official duty station located outside the continental United States to a new official station within the

continental United States. Column 1 sets forth a list of relocation allowances that the agency must reimburse. Column 2 describes reimbursements that are discretionary in nature -- the agency may, but does not have to, authorize these. Real estate transaction expenses and the miscellaneous expense allowance are included in Column 1.

Claimant believes that the JTR provision he cites is controlling, and that the agency's refusal to authorize the PCS expenses he seeks to recover is inconsistent with the regulations. This, however, is not the case. The cited JTR provision, and Table 6 thereunder, must be read in context. Paragraph C5005 of the JTR, which immediately precedes the implementing tables, explains that such expenses and allowances are payable when "it is in the Government's interest" to transfer an employee from one official duty station to another. This proviso reflects the common understanding that, while most transfers benefit both the Government and the employee, for purposes of determining eligibility for the payment of relocation benefits, the transfer must be characterized as being for the principal advantage of one or the other. If the transfer is primarily in the Government's interest, the employee is eligible for the full panoply of relocation reimbursements. If, for purposes of the applicable regulations, the transfer is not deemed to be in the interest of the Government, none of these expenses may be paid.[1] 5 U.S.C. §§ 5724(a)(1), (2), (h); 5724a(a), (c), (d), (f) (2000); *see, e.g.*, *Jean P. Kamp*, GSBCA 16833-RELO, 06-2 BCA ¶ 33,413; *Lindell Baker*, GSBCA 16832-RELO, 06-2 BCA ¶ 33,367.

One of the ways in which the agency may communicate its determination that a transfer will not be considered to be "in the interest of the Government" is by specifying in the vacancy announcement posted for the position that relocation benefits will not be provided.[2] The effect of such a statement has been previously addressed in a a situation very similar to this one:

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[1] As stated, certain of Mr. Dissette's expenses were defrayed under his return rights entitlement deriving from the performance of a tour overseas. Thus, he seeks only real estate transaction expenses and the miscellaneous expense allowance in this claim.

[2] JTR C5005-A.2 provides that each Department of Defense component is responsible for deciding whether to authorize relocation expenses after balancing an employee's rights and the prudent use of appropriated funds. Thus, an activity may determine that it is appropriate to state that PCS allowances are not offered in the vacancy announcement and, in those circumstances, an employee's transfer to accept such a position will be deemed to be primarily for the benefit of the employee.

> [The agency] advertised the position in question as one for which PCS benefits would not be provided. We do not know why it inserted this condition in the vacancy announcement, but it did do so. An agency's determination as to the primary beneficiary of a transfer is discretionary, and we will not overturn it unless it is arbitrary, capricious, or clearly erroneous under the facts of the case. . . . [Claimant] has not suggested that this determination was faulty. Thus, we conclude that [the agency] had good cause for not offering the benefits. The employee should have understood this condition of the job when he made his acceptance, since the condition was noted clearly in the job announcement.

Riyoji Funai, GSBCA 15452-RELO, 01-1 BCA ¶ 31,342 (citation omitted); *accord Marco A. Endara*, GSBCA 16524-RELO, 05-1 BCA ¶ 32,883; *Earl G. Gongloff*, GSBCA 13860-RELO, 97-1 BCA ¶ 28,792.

In this case, the Army's decision that it would not pay relocation benefits was clearly communicated in the job posting. Like the agency in *Funai*, the Army in Rock Island has not explained why it inserted this provision in the vacancy announcement; presumably, however, it determined that offering relocation benefits would not be necessary to attract qualified applicants for the advertised position. There is no evidence in this record to suggest that the determination was faulty and the agency has not acted in any way that is inconsistent with its announced position. Accordingly, we conclude that the transfer was not in the interest of the Government and claimant is not entitled to the benefits he seeks.

Finally, we note that to the extent claimant may have been given incomplete, confusing, or conflicting advice concerning his entitlement to these benefits, incorrect advice provided by government officials cannot create or enlarge entitlements that are not provided by statute or regulation. *See, e.g.*, *Joseph E. Copple*, GSBCA 16849-RELO, 06-2 BCA ¶ 33,332, at 165,290 (citing *Federal Crop Insurance Corp. v. Merrill*, 322 U.S. 380, 384-85 (1947)).

Decision

The claim is denied.

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CATHERINE B. HYATT

Board Judge