



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

June 11, 2008

CBCA 1130-RELO

In the Matter of JAGDISH D. PATEL

Jagdish D. Patel, Marietta, GA, Claimant.

Sharon Robison Hill, Chief, General Law Division, United States Army Aviation and Missile Command, Redstone Arsenal, AL, appearing for Department of the Army.

BORWICK, Board Judge.

In this matter the Department of the Army, agency, denied Mr. Jagdish D. Patel (claimant), a retired employee of the agency, reimbursement of real estate transaction expenses for his home purchase which occurred after his retirement. Claimant submitted a claim to this Board from the denial. We sustain the decision of the agency as it correctly applied the statute and the implementing Federal Travel Regulation (FTR). Claimant's home was not located at the new duty station, as required by statute and the FTR.

Background

Claimant was transferred from the agency's Redstone Arsenal, Alabama, to Honolulu, Hawaii, effective May 24, 2004, for a two-year period ending on May 24, 2006. Claimant purchased a home in Hawaii. On May 25, 2006, claimant's duty in Hawaii was extended until September 2, 2006. The agency reassigned claimant to the Redstone Arsenal effective September 3, 2006. After returning to the Redstone Arsenal, claimant voluntarily retired from federal service effective January 2, 2007.

The agency's travel authorization, dated August 3, 2006, for claimant's return relocation from Hawaii to the Redstone Arsenal, authorized reimbursement of real estate expenses, as well as other benefits.

Claimant explains that upon his return to the Redstone Arsenal, he lived in temporary quarters in Huntsville, Alabama, and then with his daughter in Smyrna, Georgia. Claimant retired at Redstone Arsenal on January 2, 2007. On August 19, 2007, claimant entered into a contract of sale for a new house in Marietta, Georgia; settlement occurred on January 25, 2008. Claimant says he purchased his home in Marietta immediately after he sold his home in Hawaii.

On March 4, 2008, claimant submitted a travel voucher seeking reimbursement of \$8615.14 for “costs related to purchase of residence at new [permanent duty station].” According to the Mapquest database, the shortest distance between Huntsville, Alabama, and Marietta, Georgia, is 160.91 miles, with an estimated driving time of three hours and forty-two minutes.

The agency denied claimant’s request for reimbursement because his duty station before and after his assignment in Hawaii was at the Redstone Arsenal, and because the claimant had voluntarily retired at Redstone Arsenal on January 2, 2007, and was never transferred to Marietta, Georgia.

Discussion

The agency acted correctly in denying reimbursement in this instance. The statute provides:

Under regulations prescribed under section 5738, an agency shall pay to or on behalf of an employee who transfers in the interest of the Government, expenses of the sale of the residence (or the settlement of an unexpired lease) of the employee at the old official station and purchase of a residence at the new official station that are required to be paid by the employee, when the old and new official stations are located within the United States.

5 U.S.C. § 5712a(d)(1) (2000). This provision is located in subchapter II of chapter 57 of title 5. For the purposes of that subchapter, the term “United States” is defined as “the several States.” 41 U.S.C. § 5721. Since Hawaii is undoubtedly one of the several states, claimant would have been eligible for reimbursement of allowable real estate transaction expenses upon his transfer from Honolulu to the Redstone Arsenal, if the purchase transaction for which claimant seeks reimbursement otherwise met all statutory and

regulatory requirements.¹ For the reasons stated below, the purchase transaction did not meet statutory and regulatory requirements.

An agency shall pay the expenses of “the . . . purchase of a residence at the new official station.” 5 U.S.C. § 5724a(d)(1). After claimant’s retirement, claimant purchased his residence in Marietta, Georgia, which is approximately 160 miles from claimant’s old official station.

The implementing FTR in effect at the time of transfer from Hawaii provided that the purpose of the real estate expense allowance is to reimburse transferred employees for the expense of purchasing a residence “at your new official duty station.” 41 CFR 302-11.1 (2006). The implementing FTR also suggests that a purchased residence must be one from which the employee commuted to and from work on a daily basis. *See* 41 CFR 302-11.100; *Marko Bourne*, GSBICA 16273-RELO, 04-1 BCA ¶ 32,544 (2003).

In short, the statute and the FTR allow for reimbursement of a transferred employee’s purchase expenses of one residence “at” the new official station and the FTR explains that a residence “at” the station is that residence from which the employee commutes “to and from work” on a daily basis. *Bourne*. The underlying rationale for the daily commuting requirement is to ensure that the purchase of the residence is incident to the transfer. *Wendy J. Hankins*, GSBICA 16324-RELO, 04-2 BCA ¶ 32,686; *see also Joseph Bush*, CBCA 660-RELO, 07-1 BCA ¶ 33,560 (stating the general rule that both the sale of the old residence and purchase of the new residence must be incident to the employee’s transfer).

Here, claimant’s residence in Marietta, Georgia, was not the residence from which the claimant commuted to and from the Redstone Arsenal on a daily basis. Indeed, since claimant purchased his house after his retirement from federal service at the Redstone Arsenal, we can only conclude that the purchase of his house was incident to his retirement, not to his transfer.

¹ In its submission to the Board, the agency, relying upon 41 CFR 302-11.6(c) (2006), suggests that claimant is not eligible for reimbursement of real estate transaction expenses because he returned to the same duty station in the United States from which he was transferred to Hawaii. However, the limitation of that provision requiring a transfer back to a different domestic duty station only applies in cases of a “foreign tour of duty.” Since Hawaii is a state of the United States, a tour of duty in Hawaii is not “foreign.”

Claimant argues that his purchase was within the allowable two year period to claim the expense. That fact, if true, does not help claimant in light of the other defects. The claim must be denied.

ANTHONY S. BORWICK
Board Judge