



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

July 2, 2008

CBCA 976-RELO

In the Matter of DEFENSE INTELLIGENCE AGENCY EMPLOYEE

Defense Intelligence Agency Employee, San Antonio, TX, Claimant.

Timothy Soltis, Comptroller, Defense Intelligence Agency, Washington, DC, appearing for Department of Defense.

GILMORE, Board Judge.

Claimant has asked the Board to review the Defense Intelligence Agency's denial of (1) a portion of the agent's fee paid in conjunction with his initial move in 2004 to Munich, Germany, from his residence in New Carrollton, Maryland, and (2) certain real estate expenses associated with his permanent change of station in 2006 from Munich, Germany, to San Antonio, Texas.¹

Background

Effective September 7, 2004, claimant was hired by the Defense Intelligence Agency (agency) and initially assigned to a permanent duty station (PDS) in Munich, Germany. At that time, he was a resident of New Carrollton, Maryland, and was hired as a civilian employee, after he was discharged from military service. In conjunction with this move, claimant was not authorized to incur any real estate expenses. In November 2004, claimant entered into a lease agreement for an apartment in Munich, Germany, for an indefinite period

¹ Due to the classified nature of claimant's position, claimant's name was not revealed. The record refers to the claimant as a male and, thus, we will continue to use that reference.

of time. At the time he entered into the lease, he paid an agent's fee in the amount of \$6177. In Germany, this fee is customarily charged for assistance provided in finding suitable housing. Although claimant was required to pay the entire amount charged for the agent's fee at the time he entered into the lease, any reimbursement for this fee is governed by section 130 of the Department of State Standardized Regulations (DSSR), which allows reimbursement, if deemed allowable, as a part of the employee's allowable yearly living expenses. The fee is normally prorated over the period of the lease. In this case, because the lease was for an indefinite period, it appears that there was an understanding that the fee would instead be prorated over the period of claimant's tour of duty, which was three years. There is no regulation providing for payment of the agent's fee other than as a part of the employee's allowable living expenses.

Claimant submitted his living quarters allowance (LQA) reconciliation for the period 11/1/04-10/31/05, claiming total living quarters expenses of \$40,871.52. The claim included one-third of the agent's fee (\$2059). Under DSSR, chapter 130, section 135, subsections 135.1 and 135.2, the maximum reimbursement allowable for this period was \$40,520.83, \$350.69 less than the amount claimed. The agency paid the allowable amount. The agency did not make a determination that any particular category of cost was disallowed since all of the costs claimed were within allowable categories of costs. It merely disallowed any amount over and above the maximum amount allowable for that period based upon the applicable pay scale.

In November, 2005, claimant applied, and was selected, for a position in the same agency in San Antonio, Texas. He returned to the United States on March 19, 2006. He submitted his LQA reconciliation for the period 11/1/05-2/24/06, the last segment of his overseas tour, claiming total expenses of \$19,630.97. For this period, he submitted as a part of his claim, the remaining two-thirds paid for the agent's fee (\$4118). Again, in accordance with the applicable DSSR regulations (cited above), the maximum reimbursement allowable for this period was \$12,186.18, a difference of \$7444.79. Again, no particular category of cost was disallowed. The agency paid the \$12,186.18 allowable under the applicable pay scale. The amount claimed over that was disallowed.²

Claimant sought payment of the remaining two-thirds of the agent's fees (\$4118), contending that he was verbally advised that in his final LQA settlement, he would be

² The agency stated in its response that it is not possible to determine what part of the reimbursement allowed in a given period was for the agent's fee, because once the costs were determined to be allowable, they were paid, not to exceed the maximum amount allowable. The remaining costs were disallowed in amount, and not by category.

reimbursed the remaining amount of his agent's fee, and that the payment would be in addition to his LQA. He argues that the fee had to be paid to secure an apartment and was not dependent upon the number of years he was to remain in Germany, and that his transportation agreement required only a one year stay in Germany.

The agency did not allow the remaining portion of the agent's fee, stating that the agent's fee is reimbursed as a part of the LQA and the maximum amount allowed for the period in which he claimed this expense was paid. The agency stated that it had no authority to pay any amount beyond that allowed for LQA under the DSSR regulations.

Claimant also submitted a claim for reimbursement of real estate expenses associated with his move to San Antonio, Texas. He maintains he was verbally told that his real estate expenses would be reimbursed, and also that his written orders provided an authorization to incur real estate expenses. The agency denied any real estate expenses because (1) under the applicable regulations, claimant was not eligible for real estate allowances, and (2) the agency was not authorized to pay even if the written orders stated otherwise. Claimant argues that he made decisions based upon agency representatives' verbal and written authorizations and that he should not be penalized for erroneous authorizations.

Discussion

Agent's Fee

The agency properly denied the agent's fee claimed. The DSSR authorizes the agency to pay the agent's fee only as a part of the employee's LQA, and once the maximum is reached for allowable expenses incurred within a given time period, the agency has no authority to pay any amount over the maximum amount allowed. There simply is no authority to pay the agent's fee as a separate cost over and above the maximum LQA.

Real Estate Expenses

The agency properly denied claimant's real estate expenses. When claimant was hired in 2004, the applicable Department of Defense Joint Travel Regulations (JTR) provided that a new appointee assigned to a first PDS was not eligible to incur real estate expenses. JTR C14001. Claimant does not appear to dispute this fact. Claimant seems to believe that his initial assignment is irrelevant to entitlement to the real estate expenses he is now claiming. His position is that he is entitled to real estate expenses in conjunction with his move from Germany to Texas because his written orders authorized these expenses.

JTR C14000, applicable in November 2005, at the time of his change of station from Germany to Texas, contains the following note:

The following employees are not eligible for real estate allowances when transferred from a foreign area PDS to a PDS in CONUS [continental United States] or in a non-foreign OCONUS [outside CONUS] area.

.....

(d) an employee hired in CONUS or a non-foreign OCONUS area for assignment to a first PDS and the PDS is in a foreign area.

This regulation is consistent with statute, 5 U.S.C. § 5724a(d)(2) (2000), which restricts eligibility for reimbursement of expenses of buying a residence upon return to the United States to those employees who were transferred overseas from posts of duty within the United States.

Accordingly, claimant, who was hired in the United States and assigned to Munich, Germany, as his first PDS, is not entitled to be reimbursed for any real estate expenses when transferring to a position in the United States. It is unfortunate that the agency provided claimant with the wrong advice. However, this Board, and the General Services Board of Contract Appeals, our predecessor board that decided employee relocation benefit claims, have consistently held that even if an agency made a commitment to reimburse an ineligible employee for real estate expenses, the commitment cannot overcome the fact that Congress has not authorized such reimbursement. *See, e.g., Andrew J. Marks*, CBCA 672-RELO, 07-2 BCA ¶ 33,602; *Kevin R. Kimiak*, GSBCA 16641-RELO, 05-2 BCA ¶ 33,007. While we are sympathetic to claimant's plight, there is no way that either this Board or the agency can right the wrong. *Bruce Hidaka-Gordon*, GSBCA 16811-RELO, 06-1 BCA ¶ 33,255. A Government agent may not authorize the reimbursement of expenses in contravention of the law. *Flordeliza Velasco-Walden*, CBCA 740-RELO, 07-2 BCA ¶ 33,634.

Decision

The claims are denied.

BERYL S. GILMORE
Board Judge