UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

April 17, 2007

CBCA 644-RELO

In the Matter of BYRON P. FRANZ

Byron P. Franz, Waukesha, WI, Claimant.

Karyn R. Jones, Acting Chief, Accounting Section, Finance Division, Federal Bureau of Investigation, Washington, DC, appearing for Department of Justice.

PARKER, Board Judge.

Background

FBI Special Agent Byron P. Franz was transferred from Indianapolis, Indiana, to Milwaukee, Wisconsin, in September 2006. Prior to his transfer, Agent Franz had entered into a contract with a security company pursuant to which Agent Franz received a home security system valued at about $1300 in return for a three-year commitment to have the system monitored at a cost of $39 per month. When he moved to Wisconsin, Agent Franz was unable to use the system because the security company was unable to monitor it in that state.

The purchaser of Agent Franz's house in Indiana did not want the security system, so Agent Franz removed it and placed it in storage. The security company refused to relieve Agent Franz of his obligation to pay for the remaining months of the three-year monitoring obligation, and Agent Franz claimed this amount as a miscellaneous expense. The FBI would like to reimburse Agent Franz for the payments and asks the Board whether it may do so.

Discussion

The miscellaneous expenses allowance (MEA) is for defraying various costs associated with discontinuing residence at one location and establishing residence at a new location in connection with a permanent change of station. 41 CFR 302-16.1 (2006). The MEA "is related to expenses that are common to living quarters, furnishings, household appliances, and to other general types of costs inherent in relocation of a place of residence." *Id*. 302-16.2. Reimbursable expenses include, but are not limited to, such things as fees for disconnecting and connecting appliances, equipment, and utilities; fees for cutting and fitting rugs, draperies, and curtains moved from one residence to another; and the costs of utility deposits or utility fees not offset by eventual refunds. *Id.* 302-16.1. The MEA does not cover, among other things, "[l]osses in selling or buying real and personal property and cost related to such transactions" or "[l]osses as the result of sale or disposal of items of personal property not considered convenient or practicable to move." *Id.* 302-16.203(a), (h).

Whether the lost security monitoring fees are allowable as a miscellaneous expense turns on whether they are more like the disconnecting/connecting fees, cutting/fitting fees, and lost utility deposits that are listed as examples of allowable costs, or losses related to sale or disposal of real or personal property, which are specifically unallowable. There is not much law on the issue. In *Richard E. Backlund*, GSBCA 14646-RELO, 98-2 BCA ¶ 30,045, the General Services Administration Board of Contract Appeals (GSBCA) disallowed as a miscellaneous expense a $785 monitoring charge owed to a security company for a security system the transferred employee left for the buyer of his house. The GSBCA held that the fee was not reimbursable because "[i]n essence, it was an agreement to lower the price of the house by $785 or, alternatively, to sell personal property with that value in conjunction with the sale of the house." *Id*. at 148,653. In *Mary Sue Hay*, GSBCA 16104-RELO, 03-2 BCA ¶ 32,355, the GSBCA denied as a miscellaneous expense the cost of furnishing and installing in the new residence a security system comparable to the one the transferred employee had left behind. There, the GSBCA explained, "[i]f Ms. Hay had had the system in her old house uninstalled, shipped to Tennessee, and installed in her new house, the charges for disconnecting and reconnecting the system would have been allowable expenses under the allowance." *Id*. at 160,061.

Neither *Backlund* nor *Hay* directly addresses the precise situation that Agent Franz faced -- lost security monitoring fees where the purchaser of the transferred employee's house did not purchase the old security system. Nevertheless, the cases hint at a general rule that the costs of purchasing and monitoring a security system are unallowable costs related to real or personal property, and the costs of disconnecting and connecting a security system moved from the old residence to the new residence are allowable. Security system monitoring fees are not similar to fees for disconnecting and connecting appliances, equipment, and utilities or to fees for cutting and fitting rugs, draperies, and curtains moved from one residence to another. Nor are they similar to lost utility deposits or utility fees not offset by eventual refunds; a security system is not a utility, and the monitoring fee at issue here is not a deposit or fee that has already been paid and cannot be refunded. By signing a contract for three years of security monitoring, Agent Franz received both a security system and the right to receive three years of monitoring services. This type of property-related loss is not covered by the miscellaneous expense allowance.

Decision

The FBI may not pay the claim.

ROBERT W. PARKER
Board Judge