



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

September 17, 2008

CBCA 1098-RELO

In the Matter of DAVID A. ROSE

David A. Rose, Fort George G. Meade, MD, Claimant.

Gary T. Zolyak, United States Army Installation Management Command, Fort George G. Meade, MD, appearing for Department of the Army.

POLLACK, Board Judge.

David A. Rose was ordered to move to Europe in July 1980 as a Quality Assurance Specialist (Ammunition Surveillance) (QASAS) due to a mandatory mobility agreement he signed. Between July 1980 and August 2004 he was stationed in various locations in Germany.

In August of 2004, he was accepted as the Director of Logistics at Fort George G. Meade in Maryland with a report date of October 4, 2004. At the time he was offered the position, he was living with his wife in Wuerzburg, Germany. He was approved to ship his household goods (HHG) to Maryland at the expense of the Government, but chose to ship only part of the HHG and left the rest for personal reasons. He choose to leave the bulk of his HHG with his wife, who was remaining in Germany to take care of her ninety-seven year old mother. Mr. Rose's mother-in-law would not travel to the United States, did not want to live in an assisted living home, and could not stay in her house to live by herself. Mr. Rose's plan was to leave his wife with her mother until his mother-in-law passed away, and then to ship the remaining HHG when his wife sold her mother's house and was then able to move to the United States.

In an attempt to make sure that he was properly covered for the eventual move, Mr. Rose has stated that he went to the Personal Property Processing Office (PPPO) in Kitzingen, Germany, to arrange to have his HHG shipped to Maryland. While arranging shipment, Mr. Rose says that he asked the counselor how long he had to ship his HHG, and the counselor stated that as long as Mr. Rose's permanent change of station (PCS) orders were valid he would be able to ship his HHG (with reimbursement). Based on correspondence in the file, it appears that the Kitzingen office no longer exists.

The time limits for shipping HHG are set out in the Joint Travel Regulations (JTR) at paragraph C1057. The regulations provide the following:

All travel, including that for dependents, and transportation, including that for HHG allowed under these regulations, should be accomplished as soon as possible. Allowable travel and transportation must begin within 2 years from the effective date of an employee's transfer or appointment, except that the 2-year period:

3. Is extended for up to an additional 2 years when the original 2-year time limitation for residence transactions completion is extended under par. C14000-B. Even when an extension is approved, PCS allowances must be calculated by using the prescribed allowances in effect on the employee's effective date of transfer.

Extensions under paragraph C14000 deal with real estate transactions, not movement or storage of HHG. While an extension under paragraph C14000 would concurrently provide a basis for the extension of the time limitation for HHG, there is no dispute here that there was no extension made or requested pursuant to a real estate transfer. Absent the real estate component needed to trigger the exception covered by paragraph C14000, the basic requirements of JTR C1057 control. That regulation has a two-year time limitation to ship HHG, with that two years running from the effective date of the transfer. In this case, that placed the latest date for shipment as October 4, 2006.

In April 2007, Mr. Rose's mother-in-law passed away and his wife planned on selling the house and moving to Ohio. This triggered Mr. Rose making the request as to the HHG. On January 3, 2008, he requested that the commanding officer at Fort Meade grant him an extension for shipping the HHG. In seeking the extension he relied upon his above-described personal situation with his mother-in-law and upon conversations with a HHG counselor in Germany and with the transportation counseling official at Fort Meade.

On January 14, 2008, the commanding officer denied Mr. Rose's request for an extension. Subsequently, Mr. Rose requested that the logistics staff of the Northeast Region Office of the Installation Management Command review the decision. That office in turn forwarded the matter to HQDA DCS G-4 for approval. The program manager of the Overseas Allowances and Entitlements Office reviewed the case and recommended that Mr. Rose's appeal be submitted to the Civilian Board of Contract Appeals (CBCA). Mr. Rose estimates his remaining weight allowance to be about 15,000 pounds, and with a cost of \$83.62 per hundred weight to ship from Germany to Maryland, the estimated cost of the shipment would be \$12,550.

The JTR in effect at the time of Mr. Rose's transfer sets out the time limits for beginning travel and transportation in paragraph C1057. The regulation does allow for an extension to the 2-year time limitation under C14000-B, however, that extension has to be associated with an extension of a residence transaction. Mr. Rose was not engaged in any extension to a qualifying residence transaction. Accordingly, the extension set out in C14000-B is not applicable to this claim.

The regulations are clear as to how long one can wait in order to secure reimbursement for HHG. Clearly, Mr. Rose has not complied with the two-year time frame, nor does he fall under the exception.

In addition to the above, Mr. Rose has asserted that he was misled by transportation counselors both in Germany and at Fort Meade. Mr. Rose claims that he was informed that he would be able to ship his HHG as long as his PCS orders were valid. We need not go into whether the officials stated exactly what Mr. Rose claims or whether what they said rose to a level of assurance. That is because it is settled law that "[t]he Government is not bound by the erroneous advice of its officials even when the employee has relied on this advice to his detriment." *Lee A. Gardner*, GSBCA 15404-RELO, 01-2 BCA ¶ 31,456, at 155,325-26; *Charles M. Ferguson*, GSBCA 14568-TRAV, 99-1 BCA ¶ 30,299; *James E. Black*, GSBCA 14548-RELO, 98-2 BCA ¶ 29,876; *see also John J. Cody*, GSBCA 13701-RELO, 97-1 BCA ¶ 28,694 (1996); *William Archilla*, GSBCA 13878-RELO, 97-1 BCA ¶ 28,799. Therefore, even if we were to find that Mr. Rose relied to his detriment on statements made by Government officials, the Government is not bound by those statements to reimburse him for shipping his HHG. Instead, the Government must conform to the written regulation.

Decision

The Board is bound by the Federal Travel Regulation (FTR) which sets out the time limit allowed for beginning travel and transportation. Rose's effective date of transfer was October 4, 2004, which means his initial two-year period expired as of October 4, 2006. He

did not qualify for an extension. Further, even if the purported advice from transportation officials was as described, and Rose relied upon it to his detriment, under our precedent, we are bound by the limits in the regulation and cannot authorize payment.

HOWARD A. POLLACK
Board Judge