



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

May 9, 2008

CBCA 1127-RELO

In the Matter of DON W. SCHUNEMAN

Don W. Schuneman, Little Rock, AR, Claimant.

Randall M. Christopherson, Director, Denver Finance Center, Small Business Administration, Denver, CO, appearing for Small Business Administration.

WALTERS, Board Judge.

Claimant, Don W. Schuneman, is a civilian employee of the Small Business Administration (SBA). Mr. Schuneman seeks reimbursement in the amount of \$5179.25 for home acquisition expenses in connection with his purchase of a home in the Little Rock, Arkansas, area. SBA had rejected Mr. Schuneman's request and directed Mr. Schuneman to our predecessor board in considering these matters, the General Services Board of Contract Appeals (GSBCA). Mr. Schuneman filed an appeal, by letter to the GSBCA dated March 18, 2008. The GSBCA having been consolidated into this Board as of January 6, 2007, the matter was docketed by this Board. For the reasons set forth below, we find that the claim was properly denied.

Factual Background

Effective February 2, 2004, Mr. Schuneman accepted a directed reassignment from Wichita, Kansas, to the SBA's newly established Guaranty Purchase/Liquidation Center in Herndon, Virginia. Relocation expenses for this reassignment and, in particular, real estate expenses, were authorized by a Change of Station Approval Request and Travel Authorization form dated January 21, 2004. Mr. Schuneman states that he used all categories of authorized relocation expenses in conjunction with that permanent change of

station (PCS) except for expenses for acquisition of a new home in the Herndon, Virginia, area. He explains that he “was not in a position to purchase a home in Herndon” immediately, because he had realized a substantially reduced price for the home that he had sold in Wichita and faced an “inflated market” for housing in Herndon. Mr. Schuneman asked for and received a one year extension, from March 2006 through March 31, 2007, for the previously authorized home acquisition benefits. It is not clear from the record whether, prior to March 2006, a similar extension was either required for or sought by Mr. Schuneman.

In December 2006, Mr. Schuneman expressed interest in an internal SBA job announcement for a position with the SBA Commercial Loan Service Center in Little Rock, Arkansas (CLSC-LR) and applied for that position. The position had been advertised as a GS-12 position, which would have represented a reduction in grade for Mr. Schuneman, who had been serving at a GS-13 level at Herndon. The advertisement for the Little Rock position also specifically stated: “RELOCATION EXPENSES *WILL NOT BE PAID.*”

Mr. Schuneman avers that, on January 19, 2007, his supervisor, John A. Miller, SBA’s Assistant Administrator for Financial Programs Operations (who oversaw all the loan processing centers, including those at both Herndon and Little Rock) was in Herndon and asked to speak to Mr. Schuneman. According to Mr. Schuneman, Mr. Miller advised him at that time that SBA “had decided to laterally transfer me to the CLSC-LR,” i.e., that the transfer would be at his GS-13 grade level, but that the agency “could not provide me with relocation benefits.”

In his description of this January 2007 conversation, and the reported words of Mr. Miller that “they”(i.e., SBA) “decided to . . . transfer me,” Mr. Schuneman seems to imply that his transfer to Little Rock was a directed transfer, which had been determined by SBA to be in the best interests of the Government. Further in this connection, Mr. Schuneman describes how Little Rock was performing with thirty employees the same quantity of work being handled by SBA’s Fresno CLSC with forty employees. In this regard, he relates that Mr. Miller advised him during their conversation that Little Rock was “falling behind” in its work and that it “will require additional staffing.”

In terms of Mr. Miller’s statement regarding the unavailability of relocation benefits for the transfer to Little Rock, Mr. Schuneman states that, during their January 19, 2007, conversation, he explained to Mr. Miller that he had requested and had received a one year extension on the home acquisition benefit associated with his earlier transfer from Wichita to Herndon and would need a second extension. He further states that Mr. Miller “asked me to request the extension and copy him on the request, which I did January 26, 2007.” Mr. Miller, he says, promised that “he would approve the extension.” Subsequently, Mr.

Schuneman received the second extension of that benefit through March 31, 2008.

Regarding the January 2007 conversation, SBA contends that what Mr. Miller had offered Mr. Schuneman was the possibility of a “voluntary reassignment to Little Rock” as a GS-13 and that, in this context, Mr. Miller had made plain that relocation benefits would not be available to him. SBA does not directly deny the allegation that Mr. Miller had asked Mr. Schuneman to request the second extension of the home acquisition benefit for his earlier transfer to Herndon. What it emphasizes, though, is that the request for that extension made no mention of the conversation and Mr. Schuneman’s agreement to the transfer to Little Rock -- and thus said nothing of Mr. Miller’s further purported agreement that the earlier unused home acquisition benefit could be used by Mr. Schuneman in conjunction with the Little Rock transfer.

Moreover, the documentary record appears to contradict the notion that the transfer to Little Rock was directed by SBA or that Mr. Miller or anyone from SBA ever formally authorized the use of the earlier benefit for purposes of the Little Rock transfer. More specifically, SBA provides an e-mail message from Mr. Schuneman to Mr. Miller dated June 18, 2007, stating: “Please accept this email as my request for a **voluntary re-assignment** to the CLSC in Little Rock, AR at my current grade level of GS-13.” (Emphasis added). In addition, SBA furnishes a copy of Mr. Miller’s e-mail message dated June 26, 2007, to Mr. Grady Hedgespeth, Mr. Miller’s manager, forwarding the paperwork for the “voluntary reassignment” and stating: “It is a **voluntary reassignment**, meaning **no relocation expense for the Agency . . .**” (Emphasis added). Mr. Schuneman has not provided the Board with any documentation that would establish the reassignment as anything other than a voluntary one or any written authorization from SBA that the unused home acquisition benefit from the earlier Wichita-Herndon transfer was available for use in connection with the Herndon-Little Rock reassignment.

Discussion

The GSBCA, in *Linda L. Shaw*, GSBCA 14977-RELO, 99-2 BCA ¶ 30,494, faced a remarkably similar situation, where a civilian employee of the Department of Defense (DoD) had been transferred from Beale Air Force Base (AFB) in California to a post in Omaha, Nebraska, and soon thereafter opted on her own to relocate to another position with the agency in Denver, Colorado. Although the DoD there had authorized a real estate acquisition benefit for the purchase of a home in Omaha, a benefit that the claimant had not used, it did not similarly authorize a home acquisition benefit for her in Denver and refused to reimburse her costs of buying a residence near Denver. The GSBCA sustained the agency’s decision in this regard, observing:

We think that DoD's understanding is correct. Under statute, an agency is obliged to reimburse an employee for costs of relocation, including real estate transaction expenses, only if the employee is "transferred in the interest of the Government." 5 U.S.C. § 5724(a), 5724a(a) (1994). "When a transfer is made primarily for the convenience or benefit of an employee, . . . or at his request," on the other hand, these costs "may not be allowed or paid from Government funds." *Id.* § 5724(h). Ms. Shaw relocated twice -- once to Omaha, at the direction of the agency, and the second time to Denver, at her own option. The first statutory provision applied to the first move and the second provision to the second move. Because the second relocation was made primarily for Ms. Shaw's benefit, the agency may not pay for the costs resulting from that move. Once Ms. Shaw began the job in Denver, she had no need for a residence in Omaha, and DoD's commitment to pay for the expenses associated with the purchase of such a house was extinguished.

99-2 BCA at 150,612; *accord Robert D. Sheldon*, GSBCA 15391-RELO, 01-1 BCA ¶ 31,180 (2000). In its 2001 opinion in *Norman R. Evans*, GSBCA 15403-RELO, 01-2 BCA ¶ 31,459, the GSBCA, citing to *Shaw*, explains that, whenever a federal employee relocates twice, each transfer and "any benefits which may be associated with it" must be "considered separately." In other words, the two transfers and their attendant benefits may not be viewed as "merged." *Evans*, 01-2 BCA at 155,330.

Here, where the record reveals that Mr. Schuneman's second transfer to Little Rock was voluntary, i.e., primarily for the employee's benefit and not a directed transfer "in the interest of the Government," payment for a home acquisition at that location would not be authorized. Moreover, as the GSBCA made clear in *Shaw*, the home acquisition benefit from the earlier transfer to Herndon could not be used for the subsequent transfer to Little Rock. The transfers and attendant benefits must be "considered separately." *Evans*. The agency's commitment to pay a Herndon home acquisition benefit was "extinguished" once Mr. Schuneman left Herndon and assumed his new position in Little Rock. *Shaw*.

Decision

The agency determination is affirmed and the claim denied.

RICHARD C. WALTERS
Board Judge