



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

December 18, 2008

CBCA 1244-RELO

In the Matter of MYLES ENGLAND

Myles England, Buffalo, NY, Claimant.

Sharon Caine, Chief, Real Estate Division, Sacramento District, United States Army Corps of Engineers, Sacramento, CA, appearing for Department of the Army.

KULLBERG, Board Judge.

Mr. Myles England, the claimant in this matter, was transferred by the Department of the Army Corps of Engineers (USACE) from his former duty station in Salt Lake City, Utah, to his new duty station in Buffalo, New York. Mr. England seeks reimbursement for the costs incurred in the sale of his former residence in Boise, Idaho. USACE denied his reimbursement claim because his home in Boise was not the residence from which he commuted daily while employed at his former duty station. For the reasons stated below, this Board denies the claim.

Background

Mr. England was living in Boise, Idaho, and working in private industry when he accepted on November 12, 2006, a position with the Department of the Army in Salt Lake City, Utah. During the time that he was employed in Salt Lake City, he continued to own his home in Boise, but did not commute from Boise. Instead, he resided with his brother in Salt Lake City. Shortly after he started work in Salt Lake City, he interviewed for a position with USACE in Buffalo, New York, which he accepted on January 11, 2007.

The permanent change of station orders for Mr. England's transfer to Buffalo, which showed a reporting date of March 22, 2007, indicated that his Boise address was his place of residence. Mr. England subsequently sold his home in Boise on July 27, 2007, and he submitted to USACE his claim for the costs of selling his home. By letter dated September 12, 2007, USACE denied his claim because his home in Boise was not the residence from which he commuted on a daily basis to his previous position in Salt Lake City.

Discussion

Mr. England contends that under applicable statute and regulations, he should be reimbursed for the costs of selling his home in Boise. Generally, 5 U.S.C. § 5724a(d) (2000) provides that a government employee who transfers to a permanent duty station within the continental United States can be reimbursed for the costs of his or her relocation. Reimbursement under that statute is subject to the Federal Travel Regulation (FTR), which "is a 'legislative rule'—a regulation issued under express authority from Congress, for the purpose of affecting individual rights and obligations by filling gaps left by a statute" *Frank J. Salber*, GSBICA 16836-RELO, 06-2 BCA ¶ 33,330, at 165,286. The FTR "therefore has controlling weight—the force of law" *Id.* The relevant FTR section in this case requires that reimbursement of costs related to the sale of an employee's home are subject to the following:

For which residence may I receive reimbursement for [sic] under this subpart?

You may receive reimbursement for the one residence from which you regularly commute to and from work on a daily basis and which was your residence at the time you were officially notified by competent authority to transfer to a new official station.

41 CFR 302-11.100 (2006). The Joint Travel Regulations (JTR), which are also applicable to Mr. England, have the same requirement. JTR C5750-B.4. There is no dispute that Mr. England was not commuting from Boise on a daily basis while he was employed in Salt Lake City. Mr. England, therefore, is not entitled to be reimbursed for the costs related to the sale of his home in Boise.

Mr. England argues that his circumstances were not contemplated by the applicable statute or regulations in that he was working and house hunting in Salt Lake City for only a brief period, sixty days, before he accepted his current position in Buffalo. Reimbursement

for the sale of a residence, however, is conditioned upon a showing that the employee commuted on a daily basis from that residence. *Allan E. McLaughlin*, CBCA 691-RELO, 07-2 BCA ¶ 33,666, at 166,696. The only exception to that rule, which is provided under the JTR, is when an employee is assigned to a remote area where “adequate family housing is not available within reasonable commuting distance” JTR C5750-B.4. That exception is not applicable to this case. Although Mr. England contends that his situation was such that he was unable to purchase a home in Salt Lake City during the brief period he worked there, this Board does not have the authority “to waive, modify, or depart from the Government’s official travel regulations for the benefit of any federal employee who is subject to them.” *Charles T. Oliver*, GSBCA 16346-RELO, 04-1 BCA ¶ 32,614, at 161,405.

Decision

The claim is denied.

H. CHUCK KULLBERG
Board Judge