UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

April 10, 2012

CBCA 2663-RELO

In the Matter of CARL E. LANDRUM

Carl E. Landrum, Laredo, TX, Claimant.

Debra J. Murray, Chief, Travel Section, National Finance Center, Customs and Border Protection, Department of Homeland Security, Indianapolis, IN, appearing for Department of Homeland Security.

POLLACK, Board Judge.

Background

Mr. Carl Landrum (claimant), an employee of Customs and Border Protection (CBP), seeks an additional $3210.09 for costs he incurred in closing an unexpired lease, associated with his transfer from Washington, D.C. to Laredo, Texas. CBP initially reimbursed claimant for a portion of the unexpired lease term, the period of June 6 to June 13, 2011. It appears that CBP then reimbursed him for an additional period of May 24 through June 5, 2011. CBP, however, denied him compensation for April 29 to May 23, as well as for June 14 to June 16. There is no dispute that claimant paid for the unexpired lease from April 28 through June 16. Similarly, there is no dispute that the lease in issue was entered into on June 14, 2010, and was to run for one year, ending on June 13, 2011. Responsibility for the June 15 and 16 dates is a secondary issue in this claim, and as such is separately addressed at the conclusion of this decision.

CBP does not contest claimant's right to costs associated with an unexpired lease; however, it denies entitlement to the compensation sought on the basis that the Federal Travel Regulation (FTR) prohibits payment where the facts show that payment could have been avoided and where the employee did not act in the manner of a prudent private individual. More specifically, CBP charges that claimant was premature in arranging the pick up and move of his household goods for April 28, 2011, and should have waited for a

later date, closer to his specified reporting date. That would have eliminated much of the claimed unexpired lease costs. Claimant asserts that the costs could not have been reasonably avoided, as he suggested a number of alternative dates for the transfer of his goods, but the April 28 moving date was the only date offered him by CBP and its relocation contractor. Moreover, he points out that prior to allowing the packing and move, he verified the moving date with CBP officials and they understood the costs to be a valid charge.

Claimant was provided travel orders on April 25, 2011, which covered his move to his new position in Laredo, Texas. He was slated to report to Laredo on June 19, 2011. The orders included authorization for reimbursement of costs the employee would incur (up to sixty days) due to having to terminate his lease prematurely. In proceeding with the relocation, claimant opted for an assisted move by CBP, which in turn contracted out the moving arrangement activities to a relocation company. Claimant, thereafter, relied entirely upon CBP and CBP's contractor to handle arrangements. According to claimant, soon after he elected a government move, he was contacted by CBP's relocation contractor to arrange for the transfer of his household goods. He states that he provided the relocation contractor with four dates on which he was available for pickup and packing of household goods. Those dates were April 28, May 17, May 23, and May 24. The dates he provided to CBP and its contractor were limited to those stated, due to his work commitments and scheduled travel for his job. CBP does not challenge that he had limited availability. He then received a call from the relocation contractor's representative, who told him that she had a carrier that could pack and load his goods on April 28 and asked if that would be acceptable. He responded in the affirmative. He understood from the designation of the April 28 date that the other suggested dates were not available.

Notwithstanding those arrangements, and because neither the CBP moving information (directions) nor the FTR contained any specific directions as to the time lines relating to lease breaking fees (how many days before the report date one could move household goods), the claimant chose not to leave the matter there. Rather, he called to the CBP travel coordinator to verify that packing and loading on April 28th would not be a problem as to him being reimbursed. The coordinator was unsure as to whether there were any regulations which would prevent use of the April 28 date. Being unsure, she called the National Finance Center and explained the situation to an official. Claimant was present during the call and heard the official state that claimant should simply claim the days as "unused rent." On the basis of this guidance and seeing no prohibition in the regulations, claimant proceeded with the move on April 28. With his household goods packed and moved, claimant moved to temporary quarters, although he continued to pay rent until the lease expired in June.

CBP has not challenged the facts as to claimant being given guidance. In fact, it simply ignores the matter in its response. CBP does, however, challenge payment on the basis of information it secured in July 2011 (a year after the events) from the relocation contractor. Based on that information, CBP contends that claimant chose the April date for his own convenience, and did so because he believed it would save him from having to pay additional daily rent. CBP further charges that claimant never advised the relocation contractor or mover as to the three offered dates in May, and that had he done so, the move could have been done on one of those dates.

Armed with that information, CBP concludes that claimant has violated 41 CFR 302-11.7 (2009) (FTR 302-11.7), which provides that in order to qualify for reimbursement for the costs of an unexpired lease, the expenses cannot be ones that could have been avoided by other arrangements. CBP further buttresses its position by citing FTR 301-2.3, which provides that an employee must exercise the same care in incurring expenses that a prudent person would exercise if traveling on personal business.

There are clearly two versions of facts in this matter. Under the claimant's version, he suggested a number of dates, but was offered only one. Under CBP's version, the claimant unilaterally choose the April 28 date and everyone went along with it. Given the competing versions, we find that claimant's description of events is far more believable. In fact, we find it almost inconceivable that the CBP officials consulted would have agreed that the matter was payable, were other dates available. Additionally, as pointed out by claimant, he was paying his rent monthly. Accordingly, daily rates were never in play, and thus the contention that those rates were the catalyst for the early move makes no sense.

The regulations clearly permit compensation when, as part of the transfer of stations, one has to end a lease prematurely. Compensation is barred only where the employee could have reasonably avoided the charges. A determination as to whether the employee could have avoided the charges is not to be made in hindsight, but rather must take into account the facts at the time. We find that in this case, the employee acted prudently and, under the circumstances, the charges could not be avoided. Accordingly, we find that the employee should be compensated for rental payments for the period from April 29 to June 13. We note as an aside that this decision in no way changes our longstanding precedent that incorrect government advice cannot trump the requirements of a regulation. In this case, however, there was no incorrect advice provided, as under the facts presented, the regulation calls for payment.

As noted at the outset of this decision, there is a secondary dispute as to whether CBP should have paid for claimant's rent from June 14 through 16, 2011. CBP provided a copy of the lease agreement which shows a lease date of June 14, 2010, and which claimant agrees

appears to set the lease end date as June 13, 2011. Under lease provision 25, however, the lease continued on a month-to-month basis until the time written notice of termination was received by the leasing office. That notice was given on April 16. Claimant states that the leasing office, using that clause, calculated the lease end as June 16, 2011. The burden of establishing the appropriate end date for the lease rests upon claimant. Here, claimant has not established to our satisfaction that the date used by the lessor was either accurate or required. We have no doubt that claimant paid the charges, but paying the charges is simply not enough to overcome what appears in the lease to be a clear end date of June 13. Accordingly, we deny this part of the claim.

Decision

Claimant is entitled to be reimbursed for the cost of the unexpired period of April 29 through May 23, 2011. His claim for June 14 through 16 is denied.

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HOWARD A. POLLACK
Board Judge