



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

October 11, 2007

CBCA 866-RELO

In the Matter of EVAN F. MELTZER

Evan F. Meltzer, Madison, MS, Claimant.

Elizabeth Rodriguez, Systems and Procedures Analyst, Department of Veterans Affairs, Washington, DC, appearing for Department of Veterans Affairs.

FENNESSY, Board Judge.

In August 2007, claimant, Evan F. Meltzer, a doctor of podiatric medicine, was authorized a permanent change of station (PCS) from his position with the Department of Health and Human Services (HHS), Blackfeet Reservation, Browning, Montana, to the Department of Veterans Affairs (VA) in Jackson, Mississippi. He asks that we review the decision of the VA that, in connection with his PCS, he is not eligible for entry into the VA's guaranteed home sale program for the sale of his home in Texas.¹ The agency denied Dr. Meltzer's request for participation in the program because the house in Texas was not the residence from which Dr. Meltzer commuted to and from the reservation nor did he occupy that residence at the time he received notice of his transfer.

¹ The guaranteed home sale program is authorized by statute and regulation. 5 U.S.C. § 5724c (2000); 41 CFR 302-12.100 (2006). The policies for the VA's guaranteed home sale program are set forth in VA OF Bulletin 01GC3.01.

Background

For some time prior to October 2005, Dr. Meltzer worked as a podiatrist at Fort Hood, Texas, pursuant to a contract with the Department of the Army. He lived with his disabled wife in a residence in nearby Harker Heights, Texas. In October 2005, Dr. Meltzer accepted a position as a new appointee with HHS to work for the Indian Health Service on the 1.5 million acre Blackfeet Reservation in northwestern Montana. He signed a twelve-month service agreement and was authorized to receive reimbursement of certain relocation expenses. The authorization did not provide for reimbursement of real estate transaction expenses.

One of the requirements of Dr. Meltzer's position at the reservation was that he live within thirty minutes from his duty station. Because Dr. Meltzer is not a Native American, he was not permitted to purchase a home on the reservation. Consequently, he resided in rented Government quarters on the hospital grounds. Further, because Dr. Meltzer's wife is not a Native American, the medical care she requires was not available to her on the reservation. The nearest locations off the reservation where care was available was in cities over 100 miles away, a two-hour drive -- if the roads were open. Therefore, to be near to required medical services, Mrs. Meltzer continued to reside in their Texas residence while Dr. Meltzer worked in Montana.

After two years on the Blackfeet Reservation, Dr. Meltzer accepted his current position with the VA in order that he and his wife could reside together in a community with medical resources nearby. He was authorized \$21,250 for reimbursement of real estate transaction expenses in connection with the purchase of a home in Mississippi, but he was not authorized any reimbursement of expenses in connection with the sale of a residence. As he had unsuccessfully attempted to sell the Texas residence, Dr. Meltzer asked the VA to allow him to participate in the guaranteed home sale aspect of the VA's relocation services program.

The VA denied Dr. Meltzer's request because he did not regularly commute from the Texas home to his duty station in Montana and he did not occupy that home when he was notified of his transfer from Montana to his new duty station in Mississippi.

Discussion

By statute, when an employee is transferred in the interest of the Government, an agency is required to pay the employee the expenses of the sale of his or her residence at the old official duty station. 5 U.S.C. § 5724a(d)(1). Pursuant to the Federal Travel Regulation (FTR), which implements this statute, to be reimbursed for such real estate transactions an employee must occupy the residence when he or she is notified of the transfer. 41 CFR 302-

11.5. In addition, regulation requires that this be the residence from which the employee commutes to and from work on a daily basis. 41 CFR 302-11.100; *Charles T. Oliver*, GSBCA 16346-RELO, 04-1 BCA ¶ 32,614.

Dr. Meltzer does not dispute that his Texas residence does not meet these eligibility requirements. His claim is that the VA should waive those requirements pursuant to FTR 302-2.106. That provision authorizes an agency head or designee to waive any statutory or regulatory limitations for employees relocating from remote or isolated locations when failure to do so would cause undue hardship on the employee. *Id.* Dr. Meltzer states that he will experience financial hardship if he is not allowed to participate in the program because it will be difficult to support the expense of a home in the Jackson, Mississippi, area if he cannot sell his home in Texas.

The record does not establish that a VA official with authority to waive the requirements in question considered Dr. Meltzer's request. According to an e-mail message written by the VA's deciding official, the waiver could only be granted by the head of the agency (the Secretary) or his designee (the Assistant Secretary for Management). There is no indication in the record that the VA forwarded Dr. Meltzer's request for a waiver to either of those officials. In fact, e-mail correspondence in the record indicates that a "consultant" made the determination that Dr. Meltzer could not participate in the guaranteed home sale program. Neither the VA's e-mail message denying Dr. Meltzer's request nor the VA's report to the Board addressed the request for a waiver.

Dr. Meltzer is entitled to have his request decided by the proper agency official. Accordingly, this matter is returned to the agency for consideration by an authorized official of claimant's request for a waiver. *Robert G. Carrell II*, GSBCA 16113-RELO, 03-2 BCA ¶ 32,358.

EILEEN P. FENNESSY
Board Judge