



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

November 14, 2012

CBCA 2667-RELO

In the Matter of ANDREA M. DUFF HINKLE

Andrea M. Duff Hinkle, Purcellville, VA, Claimant.

Jeremy Becker-Welts, Office of Counsel, United States Army Corps of Engineers, Winchester, VA, appearing for Department of the Army.

SOMERS, Board Judge.

In 2008, the United States Army Corps of Engineers (USACE) hired claimant, Andrea M. Duff Hinkle, for a position in Kuwait. Ms. Hinkle had been previously employed by another agency and living in Alaska, where she owned a home. Ms. Hinkle's orders authorized non-temporary storage of household goods, but did not authorize reimbursement of real estate expenses. Ms. Hinkle retained ownership of her home in Alaska.

In 2009, Ms. Hinkle accepted a position with the USACE in Hawaii.

In 2011, Ms. Hinkle accepted a position with the USACE in Virginia. These orders authorized reimbursement of real estate expenses for both the sale and purchase of a home.

After Ms. Hinkle moved to Virginia, she sold her home in Alaska and sought to obtain reimbursement for the real estate expenses in the amount of \$14,843.60. The agency denied her request, stating that the regulations do not provide for reimbursement of expenses associated with her home in Alaska. The agency states that for Ms. Hinkle to be eligible for reimbursement of real estate expenses, she must be seeking reimbursement for expenses associated with a residence at her previous location, specifically, Hawaii.

Discussion

The statute that applies to the sale of a residence in the event that an employee is transferred in the interest of the Government states:

Under regulations prescribed under section 5738, an agency shall pay to or on behalf of an employee who transfers in the interest of the Government, expenses of the sale of the residence . . . of the employee at the old official station and purchase of a residence at the new official station that are required to be paid by the employee, when the old and the new official stations are located in the United States.

5 U.S.C. § 5712a(d)(1) (2000). The implementing Federal Travel Regulation (FTR) (set forth in a question and answer format) explains when a claimant can be reimbursed for expenses incurred in the residential transactions:

To be reimbursed for expenses incurred in my residence transactions, must I occupy the residence at the time I am notified of my transfer?

Yes, to be reimbursed for expenses incurred in your residence transactions, you must occupy the residence at the time you are notified of your transfer, unless your transfer is from a foreign area to an official station within the United States other than the one you left when you transferred out of the United States, as specified in § 302-11.2(b).

41 CFR 302-11.5 (2010). Section 302-11.2(b) identified the permanent change of station to occur when an employee transfers from an official station within the United States to a foreign area, and then back to the United States. The FTR further specifies that the residence for which the employee may receive reimbursement is that residence from which the employee commutes “to and from work” on a daily basis. *See* 41 CFR 302-11.100; *Jagdish D. Patel*, CBCA 1130-RELO, 08-2 BCA ¶ 33,878; *Marko Bourne*, GSBCA 16273-RELO, 04-1 BCA ¶ 32,544 (2003).

Since Hawaii is part of the United States, claimant would have been eligible for reimbursement of allowable real estate transaction expenses upon her transfer from Hawaii to Virginia. Here, however, Ms. Hinkle seeks reimbursement for real estate expenses resulting from the sale of a residence in Alaska. Clearly, claimant did not occupy that residence at the time that she was notified of her transfer to Virginia.

The agency's determination that it could not pay claimant's expenses associated with the sale of her house is correct. The claim is denied.

JERI KAYLENE SOMERS
Board Judge