



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

June 10, 2020

CBCA 6745-RELO

In the Matter of CARLOS A. DODDS

Carlos A. Dodds, Claimant.

Ilona M. Keller, Human Resources Specialist, Civilian Personnel Directorate, Department of the Army, APO Area Europe, appearing for Department of the Army.

KULLBERG, Board Judge.

Claimant, Carlos A. Dodds, seeks reimbursement for the expense of terminating his lease at his former residence when he transferred from his previous permanent duty station (PDS), which was outside the continental United States (OCONUS), to a new OCONUS PDS. The agency, the Department of the Army (Army), contends that claimant is not entitled to reimbursement for those expenses because his transfer was voluntary. For the reasons stated below, the claim is granted and remanded to the agency for further action consistent with this decision.

Background

On December 10, 2017, claimant transferred from Charleston, South Carolina, to a position with the Department of the Navy in Singapore. Claimant executed a lease on January 15, 2018, for a term of thirty-four months. The lease also had a diplomatic clause that required a tenant to give two months' notice with a minimum stay of twelve months.

Claimant applied for a position at a higher grade with the Army in Kuwait, and on July 18, 2018, the Army offered claimant that position, which he accepted July 20, 2018. The Army required claimant to report to his new position in Kuwait no later than December 23, 2018. On July 23, 2018, claimant notified his landlord of the reassignment,

and his landlord agreed to a charge of \$16,797.80 to terminate the lease, which included rent for three months and other fees.

On November 30, 2018, claimant vacated his apartment, and on December 9, 2018, he reported to his new PDS in Kuwait. Claimant submitted his claim for reimbursement of the cost of terminating his lease in Singapore, but the Army denied reimbursement. Subsequently, claimant submitted his claim to the Board. In its agency report, the Army contended that claimant's transfer was not involuntary or beyond his control because he had applied for his position in Kuwait.

Discussion

The issue in this matter is whether claimant's application for his current position precludes reimbursement for the cost of terminating his lease. Statute provides that an employee transferring to a foreign area "may be granted . . . [a] transfer allowance for extraordinary, necessary, and reasonable subsistence and other relocation expenses (including unavoidable lease penalties), not otherwise compensated for, incurred by an employee incident to establishing himself at a post of assignment." 5 U.S.C. § 5924(2)(A) (2018). "The President has delegated to the Secretary of State authority to issue regulations which implement statutes providing for overseas pay differentials and allowances, including the [foreign transfer allowance (FTA)]." *Stuart L. Sumner*, CBCA 1097-RELO, 08-2 BCA ¶ 33,897 (citing Exec. Order No. 10,903 (1961), *reprinted as amended in* 5 U.S.C. § 5921). "Pursuant to this authority, the Secretary has issued the Department of State Standardized Regulations (DSSR)." *Id.*

The DSSR provides that a transferring employee's FTA includes a lease penalty expense "to assist employees departing either the U.S. or foreign area to help offset the expense of unavoidable lease penalties in the U.S. or a foreign area for the early termination of a residence quarters lease due to transfer required by a Federal agency." DSSR 241.2.d. Additionally, "[t]he amount of reimbursement shall not exceed the amount required by the specific terms of a rental contract signed by the employee as a prior condition of obtaining the lease, or the equivalent of three months' rent, whichever is less." *Id.* 242.4. Reimbursement also requires showing the following:

- a. the employee's transfer to a foreign post of assignment was due solely to actions by the employing agency and to unusual conditions fully beyond the control of the employee; and

- b. the termination of the lease and departure of the employee did not result from any specific actions by the employee to seek a curtailment of the assignment for transfer or promotion; and
- c. the employee was not negligent in promptly notifying the landlord of the intent to terminate the lease after receiving an official notice of transfer; and
- d. all reasonable steps were taken by the employee to dispose of the residence quarters by sublease or assignment to others; and
- e. both the employee and employing agency made reasonable efforts to avoid the full lease penalty by delaying the employee's transfer to a foreign post of assignment.

Id.

The Army contends that under the above-referenced DSSR provisions, claimant is not entitled to reimbursement of his lease termination fee because he applied for his current position in Kuwait, and his transfer, therefore, was voluntary. The Board has recognized the following:

It is well established that “[t]he purpose of agency regulations is to support the intent of the enabling legislation.” 62 Comp. Gen. 641, 642 (1983) (citing *Dixon v. United States*, 381 U.S. 68, 74 (1965); *Manhattan General Equipment Co. v. Commissioner of Internal Revenue*, 297 U.S. 129, 134 (1936)). Additionally, “[t]he purpose of the Overseas Differentials and Allowances Act as expressed in Senate Report No. 1647, 86th Congress, June 22, 1960, was to improve and strengthen Government overseas activities by establishing a uniform system for compensating all Government employees in overseas posts irrespective of the agency by which they were employed.” *Charles E. Brookshire*, B-196809 (May 9, 1980). . . . Neither statute nor the DSSR contain any language that would suggest that an unavoidable lease penalty expense is reimbursable only if an employee's transfer is directed by his or her agency and, therefore, involuntary.

James R. Dikeman, CBCA 4238-RELO, 16-1 BCA ¶ 36,200 (2015). See also *Sybil L. Brooks-Dupree*, CBCA 4825-RELO, 16-1 BCA ¶ 36,273 (“employee's seeking a transfer to an advertised position does not preclude the recovery of lease breaking expenses”). The fact that claimant applied for his position in Kuwait, consequently, does not amount to a violation

of the relevant DSSR provisions. Claimant gave prompt notice to his landlord, and he delayed his move as long as possible in order to comply with the Army's direction as to his reporting date in Kuwait. Under DSSR 242.4, claimant's reimbursement for the cost of terminating his lease is limited to the amount of his rent for three months. The fees claimant paid in addition to three months' rent are not reimbursable. Accordingly, the Board remands this matter to the agency to compute claimant's reimbursement consistent with this decision.

Decision

The claim is granted. This matter is remanded to the agency to determine reimbursement consistent with this decision.

H. Chuck Kullberg

H. CHUCK KULLBERG

Board Judge