



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

August 21, 2014

CBCA 3793-RELO

In the Matter of KEITH JOHNSON

Keith Johnson, Dillon, MT, Claimant.

Chris Barned, Relocation Specialist, Bureau of Land Management, Department of the Interior, Denver, CO, appearing for Department of the Interior.

STERN, Board Judge.

Claimant, an employee of the Department of the Interior (Interior) in Eldorado Hills, California, applied for and accepted a position with another Interior office in Montana. As part of the transfer to Montana, Interior authorized relocation expenses for claimant, including any expenses associated with the selling of his home, if any, at his previous duty station. Claimant commenced his duties in Montana in June 2013.

Prior to his assignment to the California office, claimant resided in Carson City, Nevada. Claimant commenced his employment in the California office in October 2010, but did not sell his house in Nevada. Interior's California office was approximately 126 miles from his Nevada home.

While working in Eldorado Hills, and to avoid traveling the distance to his home in Nevada each day, claimant stayed in California from Monday through Thursday of each week, either with friends, in a hotel, or in his office. Claimant returned to Carson City each

weekend. At certain times of the year claimant commuted from Carson City to Eldorado Hills. Claimant at no time obtained a permanent residence in California.

In July 2012, claimant began tele-commuting from his home in Carson City and did not return to Eldorado Hills for work prior to his move to Montana. During the period from July 2012 to June 2013, claimant either tele-commuted, worked on a detail in Interior's Carson City office, or was on leave without pay.

Claimant seeks reimbursement of his expenses incident to the sale of his home in Carson City. Interior denied reimbursement on the basis that claimant was relocating from Eldorado Hills, California, and not Carson City, Nevada. Interior argues that since claimant was not commuting to Eldorado Hills on a regular basis from his Nevada home, he is not entitled to reimbursement of expenses for the sale of that property.

Discussion

We have stated,

Generally, under 5 U.S.C. § 5724a(d) (2006), a government employee who transfers in the interest of the Government, to a new duty station within the continental United States, can be reimbursed for the [expenses] of his or her relocation. These include certain costs associated with selling a home at the prior duty station and purchasing one at the new location. Reimbursements under this statutory provision are subject to the Federal Travel Regulation (FTR), a legislative rule that has the force and effect of law. The pertinent FTR provision restricts reimbursement of real estate transaction expenses to those incurred for the sale of the residence from which the employee regularly commuted to and from work on a daily basis and which was the residence at the time of official notification of the transfer. 41 CFR 302-11.100 (2011). . . . The Board has interpreted these provisions on numerous occasions, recognizing that reimbursement of the cost of selling a home at the former duty station is conditioned upon a showing that the employee commuted to work on a daily basis from that residence. *E.g.*, *Connie J. Holliday*, CBCA 1866-RELO, 10-1 BCA ¶ 34,439; *Myles England*, CBCA 1244-RELO, 09-1 BCA ¶ 34,045 (2008); *Allan E. McLaughlin*, CBCA 691-RELO, 07-2 BCA ¶ 33,666.

Linda Cashman, CBCA 3495-RELO, 14-1 BCA ¶ 35,535.

Here, claimant worked in Eldorado Hills from October 2010 to July 2012, and did not regularly commute to his office from his Carson City home. However, beginning in July 2012, claimant worked in Carson City, Nevada. He either worked from home or commuted from home to Interior's local office. In addition, for part of the time he was on leave without pay and remained in Carson City. From July 2012 through his move to Montana in July 2013, claimant no longer worked in California. Under these circumstances, we find that at the time of the transfer to Montana claimant was regularly commuting from his Carson City home to work.

Decision

Claimant is entitled to be reimbursed his real estate transaction expenses, in accordance with the regulations, relating to the sale of his home in Carson City, Nevada.

JAMES L. STERN
Board Judge