



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

March 26, 2015

CBCA 4367-RELO

In the Matter of NICHOLAS V. NECHITAILO

Nicholas V. Nechitailo, King George, VA, Claimant.

Sheila Melton, Director, Travel Functional Area, Enterprise Solutions and Standards, Defense Finance and Accounting Service, Indianapolis, IN, appearing for Department of Defense.

DRUMMOND, Board Judge.

The Department of the Navy reassigned Dr. Nicholas Nechitailo from London, England, to Dahlgren, Virginia, in July 2012. Dr. Nechitailo claims that he is entitled to be reimbursed for costs related to the sale of his London home. We deny the claim for the reasons discussed below.

Background

In September of 2009, Dr. Nechitailo transferred from the Naval Surface Warfare Center in Dahlgren, Virginia, to London, England, pursuant to a permanent change of station (PCS) order. While stationed in London, he purchased a home. In July 2012, the Navy issued a PCS order transferring Dr. Nechitailo back to the Naval Surface Warfare Center in Dahlgren, Virginia. His orders were amended on several occasions to add or correct various items in the original order. Neither the original order nor the amended order authorized any real estate expenses. Upon his return to Dahlgren, Virginia, Dr. Nechitailo submitted a claim for reimbursement of real estate expenses. The agency denied his claim. Thereafter, Dr. Nechitailo requested that his claim be forward to the Defense Finance Accounting Service (DFAS) for reconsideration. DFAS affirmed the denial and forwarded the claim to the Board on Dr. Nechitailo's behalf. Dr. Nechitailo believes that he is entitled to be reimbursed for real estate expenses he incurred when he sold his London home.

Discussion

Statute provides that subject to regulations issued by the Administrator of General Services,

an agency shall pay to or on behalf of an employee who transfers in the interest of the Government from a post of duty located outside the United States to an official station within the United States (other than the official station within the United States from which the employee was transferred when assigned to the foreign tour of duty) . . . expenses required to be paid by the employee of the sale of the residence (or the settlement of an unexpired lease) of the employee at the old official station from which the employee was transferred when the employee was assigned to the post of duty located outside the United States.

5 U.S.C. §§ 5724a(d)(2)(A), 5738(a)(1) (2012). The regulations issued by the Administrator, called the Federal Travel Regulation (FTR), specify the circumstances under which real estate transaction expenses are reimbursable. These regulations are implemented for civilian employees of the Department of Defense in the Joint Travel Regulations (JTR). Pursuant to the applicable regulations, the Navy's denial of Dr. Nechitailo's claim was proper for two reasons. First, the regulations do not permit reimbursement for real estate transactions that occur outside the continental United States (OCONUS). Second, the regulations do not authorize reimbursement when an employee is returned to the same duty station from which he was originally transferred.

Dr. Nechitailo seeks reimbursement for the sale of his London home. However, the FTR only permits reimbursement for real estate transactions in the United States. Section 302-11.6 states that employees may be reimbursed for the "[e]xpenses of selling your old residence and purchasing your new residence *in the United States*." 41 CFR 302-11.6 (2012) (emphasis added). Further, table C of section 302-3.101 specifically addresses transfers from an OCONUS official duty station to an official station in the continental United States (CONUS). While column 1, item 4 states that the agency must pay or reimburse "[s]ell & buy residence transaction expenses," the note explains that these expenses are "[a]llowed when old and new official stations are located in the United States." 41 CFR 302-3.101. Because the home Dr. Nechitailo sold was located outside the United States, he is not entitled to be reimbursed for any real estate expenses incurred.

Further, the regulations also specify that to be eligible for real estate transaction expenses, an employee returning from OCONUS must be assigned to a duty station that is different from the one from which he transferred when assigned to the foreign station. Table

C of section 302-3.101 is again instructive on this point. The note to column 1, item 4 explains that residence expenses are “[a]lso allowed when instead of being returned to the former non-foreign area official station, an employee is transferred in the interest of the Government to a different non-foreign area official duty station than from the official station from which transferred when assigned to the foreign official station.” 41 CFR 302-3.101. Additionally, concerning transfers from foreign duty locations to CONUS, JTR C5750-D provides in pertinent part:

An employee who has completed an agreed upon tour of duty at a foreign PDS [permanent duty station] and is reassigned/transferred to a different CONUS/non-foreign OCONUS PDS (other than the one from which transferred when assigned to the foreign PDS) is authorized reimbursement under this Part.

Dr. Nechitailo did not transfer back to a different non-foreign station than from where he left to go to the foreign station. He was transferred from the Dahlgren, Virginia, research center to a center in England. Upon transfer back into the United States, Dr. Nechitailo returned to the same Dahlgren, Virginia, research center. Therefore, he is not entitled to reimbursement of his real estate expenses.

Decision

For the reasons explained above, Dr. Nechitailo is not entitled to reimbursement of real estate transaction expenses incurred in the sale of his London home. The claim is denied.

JEROME M. DRUMMOND
Board Judge