



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

December 7, 2015

CBCA 4798-RELO

In the Matter of ROBERT W. GARMAN

Robert W. Garman, Odenton, MD, Claimant.

James Durkee, Office of the General Counsel, Defense Information Systems Agency, Fort Meade, MD, appearing for Department of Defense.

SOMERS, Board Judge.

Claimant, Robert W. Garman, an employee of the Defense Information Systems Agency (DISA), seeks reimbursement of real estate expenses in the amount of \$43,000, allegedly incurred as a result of a permanent change of station (PCS) transfer from Falls Church, Virginia, to Fort Meade, Maryland. For the reasons set forth below, we deny Mr. Garman's claim.

Background

In August, 2010, Mr. Garman submitted an application in response to a USAJOBS announcement for a position at the DISA office located in Falls Church, Virginia. The job announcement stated:

This position will be relocating to Ft. Meade, Maryland, in accordance with the Base Realignment and Closure Act. Anticipated date of relocation is 2010-2011.

The announcement noted that permanent change of station (PCS) costs may be authorized.

Before DISA hired Mr. Garman, the agency issued a memorandum, dated March 22, 2010, entitled “Change in Duty Station and PCS Entitlements – BRAC [Base Closure and Realignment Commission] related.” The memorandum expressly stated:

Effective 1 May 2010, new local hires to DISA will no longer be entitled to a PCS move. Supervisors and managers must be very clear in their interviews and discussions with potential employees that our duty location will change to Ft. Meade and no PCS entitlements will be offered or approved for those joining the Agency after this date. Prior to their employment employees are required to sign a condition of employment agreement acknowledging [sic] they will not be eligible for PCS entitlement under provisions of our BRAC Transfer of Function.

In a letter dated September 27, 2010, the agency confirmed its offer of employment to Mr. Garman. The offer included a relocation incentive of \$10,000, with a three year service agreement, identified Mr. Garman’s duty station location as Falls Church, Virginia, and set his start date as October 12, 2010. Mr. Garman lived in Manassas, Virginia, which is within the National Capital Region and the Washington Local Commuting Area, as those terms are defined in Department of Defense Instruction (DoDI) 4515.14. Based upon the location of his residence, Mr. Garman was considered a “local hire.”

In October, immediately after starting to work for DISA, Mr. Garman asked about the status of his PCS orders to Fort Meade. Following an exchange of e-mail messages between Mr. Garman and various agency officials, the agency issued travel orders, dated December 21, 2010, which authorized Mr. Garman to move from his home address in Manassas, Virginia, to Fort Meade. The orders indicated that Mr. Garman would be entitled to the shipment and temporary storage of his household goods and to reimbursement of travel expenses for himself and his dependents. The orders did not authorize real estate expenses, round-trip travel for house-hunting, per diem, or temporary quarters subsistence expenses.

Mr. Garman purchased a residence in Maryland on March 21, 2011, after the sale of his former residence in Virginia on March 15, 2011. On May 1, 2011, Mr. Garman’s permanent duty station [PDS] moved from Falls Church, Virginia, to Fort Meade, Maryland. The increase in his commuting distance between his old residence and old PDS, and the distance between his old residence and new PDS is less than fifty miles.

Mr. Garman submitted a claim for travel and for the shipment and storage of household goods. The agency reimbursed Mr. Garman costs for travel and the shipment of

household goods, but denied his claim for reimbursement of real estate expenses of \$43,000. Mr. Garman seeks review of the agency's decision to deny reimbursement of the real estate expenses.

Discussion

By statute, an employee is entitled to reimbursement of PCS expense entitlements for “the travel expenses of an employee transferred in the interest of the Government from one official station or agency to another for permanent duty, and the transportation expenses of his immediate family.” 5 U.S.C. § 5724(a)(1) (2006). The Federal Travel Regulation (FTR) implements this statutory requirement, and provides “an allowance for expenses incurred in connection with residence transactions” when an employee transfers “from an old official station to a new official station,” 41 CFR 302-11.1 (2010), so long as the new duty station is at least fifty miles from the old station. *Id.* 302-1.1(b), -2.6. The regulations provide a test for determining whether a new official station meets the fifty-mile distance test:

The distance test is met when the new official station is at least 50 miles further from the employee's current residence than the old official station is from the same residence. For example, if the old official station is 3 miles from the current residence, then the new official station must be at least 53 miles from that same residence in order to receive relocation expenses for residence transactions. The distance between the official station and residence is the shortest of the commonly traveled routes between them. The distance test does not take into consideration the location of a new residence.

Id. 302-2.6(a).

In this case, Mr. Garman's original residence was located approximately 31.5 miles from the DISA location in Falls Church, Virginia, using Google maps. Pursuant to the regulation, in order to meet the distance test, the new official station would need to be approximately 81.5 miles from his original residence. Again, using Google maps, the distance from Mr. Garman's original residence to the DISA Headquarters at Fort Meade is approximately 62.7 miles. Therefore, Mr. Garman would not be entitled to PCS benefits under the distance test, because his new official station is not at least fifty miles further from his original residence than the old official station.

The Joint Travel Regulations (JTR), applicable to Mr. Garman as an employee of the Department of Defense, contain some exceptions to the distance test. JTR C5080-F.2 (2010) states, in part, that the authorizing official *may* authorize PCS expenses reimbursement on a case-by-case basis for PCS moves of less than fifty miles. The agency possesses broad

discretion in determining entitlement to relocation benefits in short-distance moves. *James T. Abbott*, GSBCA 15025-RELO, 00-2 BCA ¶ 30,949. Here, the agency exercised its discretion when it decided that no PCS benefits would be provided to local hires employed after May 1, 2010, for any PCS moves related to BRAC. The agency hired Mr. Garman after May 1, 2010. There is no dispute that Mr. Garman's PDS moved from Falls Church to Fort Meade as a result of BRAC.

Mr. Garman claims that an agency official promised him certain benefits as part of the negotiations surrounding his hiring. As we have held in numerous cases, advice or promises provided by an agency official is not sufficient to overcome the statutes and regulations limiting reimbursement. *See Evester Edd*, CBCA 1582-RELO, 09-2 BCA ¶ 34,232, at 169,194; *Flordeliza Velasco-Walden*, CBCA 740-RELO, 07-2 BCA ¶ 33,634, at 166,580 ("The Government is not bound by the erroneous advice of its officials, even when the employee has relied upon this advice to his detriment."). Mr. Garman is not entitled to receive PCS benefits because the agency properly exercised its discretion to deny such benefits to new local hires.

Decision

The claim is denied. Mr. Garman is not entitled to receive any PCS benefits, including reimbursement for real estate expenses.

JERI KAYLENE SOMERS
Board Judge