



UNITED STATES  
CIVILIAN BOARD OF CONTRACT APPEALS

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September 27, 2007

CBCA 805-RELO

In the Matter of LARRY A. RIVES

Larry A. Rives, El Paso, TX, Claimant.

Mark B. McMurry, Office of General Counsel, United States Army Corps of Engineers, Fort Worth, TX, appearing for Department of the Army.

**STERN**, Board Judge.

Mr. Larry A. Rives has asked the Board to review the denial of his claim for certain relocation expenses associated with his move from Hot Springs Village, Arkansas, to Horizon City, Texas. Specifically, Mr. Rives seeks reimbursement of \$8181.13, for the expenses incurred in the sale of his old home at his former duty location.<sup>1</sup>

Background

According to Mr. Rives, in March 2005, personnel at the Little Rock, Arkansas, District of the United States Army Corps of Engineers and he discussed a possible move to the Corps of Engineers office at Fort Bliss, Texas, for him to assist in base realignment and closing proceedings. This potential move appealed to Mr. Rives since he was told that he might receive a promotion and because he believed it would be beneficial to his wife's health. Mr. Rives applied for the position in Texas. In late 2005, Mr. Rives learned that he had not been selected for the position. However, in anticipation of the move, Mr. Rives purchased a house in Texas. Mr. Rives does not seek any costs associated with this purchase.

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<sup>1</sup> Though Mr. Rives stated that he is seeking moving expenses, the record establishes that he seeks only the \$8181.13 in expenses associated with the sale of his residence. This decision does not address any moving expenses.

Mr. Rives then became aware of another position (a lateral move for Mr. Rives) that would be available at the Fort Bliss location. He applied for that position. On May 17, 2006, management personnel at Fort Bliss and Little Rock agreed to transfer Mr. Rives to this position in Texas. The Corps of Engineers stated that until a position was found for Mr. Rives, it did not make a final decision to transfer him to the new location.

During this period, Mr. Rives sold his property in Arkansas. He executed a contract for the sale of that property on April 12, 2006. The closing on that property was held on May 18, 2006.

Mr. Rives' travel orders authorized payment for real estate expenses. His request for payment of \$8181.13 was initially approved by the Corps of Engineers, but subsequently denied on review.

### Discussion

A government agent may not authorize the reimbursement of expenses in contravention of the law. *Flordeliza Velasco-Walden*, CBCA 740-RELO, 07-2 BCA ¶ 33,634. Therefore, the initial approval of payment of Mr. Rives' housing expenses is of no assistance to Mr. Rives if reimbursement is otherwise prohibited by law.

Statute and regulations establish the criteria for reimbursement of relocation expenses. An employee who, in the interest of the Government, is transferred from one duty station to another is entitled to the reimbursement of relocation expenses if he remains in government service for a period of twelve months after the transfer. 5 U.S.C. § 5724 (2006); JTR C14000-A.

However, relocation expenses may be reimbursed only when they are incident to the transfer from the old to the new station. *Marko Bourne*, GSBCA 16273-RELO, 04-1-BCA ¶ 32,544 (2003). The General Services Board of Contract Appeals, our predecessor board in deciding relocation appeals, established that the controlling factor is whether the agency has manifested an intent to transfer the employee at the time the expenses are incurred. *Michael L. Scott*, GSBCA 16310-RELO, 04-1 BCA ¶ 32,526 (2003). Where a contract for purchase or sale is entered into prior to the agency's indication of an intent to transfer the employee, "the transaction will be considered to have been entered into for some reason other than the transfer. That reason may have been anticipation of a transfer, but unless the transfer has been announced, anticipation is insufficient to make the sale incident to the transfer." *Peter J. Grace*, GSBCA 16790-RELO, 06-1 BCA ¶ 33,219 at 164,635 (citing *Bourne*); see *Gary J. Tennant*, CBCA 553-RELO, 07-1 BCA ¶ 33,558.

Thus, in an earlier case, even though an employee believed that an employment offer had been made, it was held that the expenses of the sale of a house were not reimbursable since the formal notification of transfer to the new position was not made until after the contract of sale was executed. *Connie F. Green*, GSBCA 15301-RELO, 01-1 BCA ¶ 31,175 (2000). Only where special circumstances exist which equate to an administrative intent to transfer an employee, such as a potential reduction in force or the closing of an office, have the expenses of sale been allowed prior to the official notification of definite employment at the new location. *See id.*, and cases cited therein.

No such special circumstances are present here. Mr. Rives is entitled to reimbursement of his house selling expenses only if he entered into the contract of sale after the Corps of Engineers announced the transfer and thereby manifested the intent to transfer him. While the Corps of Engineers sought to transfer Mr. Rives, it agreed to do so only if a position at the new location in Texas became available and Mr. Rives accepted the transfer. It was not until May 17, 2006, that the Corps of Engineers identified a position that Mr. Rives could fill. We find it was not until then that the Corps manifested an intent to transfer Mr. Rives to the position. Therefore, Mr. Rives' execution of the contract for sale of his residence on April 16, 2006, was not incident to the transfer.

#### Decision

Mr. Rives' expenses of sale of his residence are not reimbursable by the Corps of Engineers.

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JAMES L. STERN  
Board Judge