



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

April 25, 2007

CBCA 660-RELO

In the Matter of JOSEPH BUSH

Joseph Bush, Fort Worth, TX, Claimant.

Leroy G. Babin, Comptroller, 301st Fighter Wing (AFRC), Department of the Air Force, Fort Worth, TX, appearing for Department of the Air Force.

VERGILIO, Board Judge.

On February 26, 2007, the Board received from the comptroller at the Department of the Air Force, Fort Worth, Texas, a request for an advance decision, 31 U.S.C. § 3529 (2000), concerning payment of relocation expenses of an employee, Joseph Bush. Mr. Bush seeks reimbursement of real estate relocation expenses of \$5585.16, relating to the purchase of a residence at his new duty station. On April 11, 2007, Mr. Bush supplemented the record in response to the submission by the Government.

This relocated employee is not entitled to reimbursement of expenses associated with the purchase of a home at his new duty station, because the employee became obligated for those expenses prior to an official determination to transfer the employee to that new duty station.

Background

As a Department of Defense civilian employee, Mr. Bush was assigned to a squadron located at a base in Arizona. In 2005, the base was approved for base realignment and closure (BRAC). In May 2006, Mr. Bush and other employees at the base were informed that a reduction in force associated with the closure would be accelerated to March 2007. As early as May 2006, Mr. Bush had discussions with an agency supervisor in Fort Worth, Texas, about obtaining a position in Fort Worth; appropriate positions were not then or immediately available. Mr. Bush engaged in further communications as he attempted to obtain a "by name" request to secure a position. In June 2006, Mr. Bush entered his name

with the Clearing House Placement Program, seeking permanent employment in Fort Worth. On July 7, 2006, Mr. Bush entered into a contract to purchase a house from a builder in Fort Worth. On November 2, 2006, a selecting official submitted the name of Mr. Bush to fill a vacant position; the request for personnel action has a proposed effective date of December 10, 2006. On November 20, 2006, Mr. Bush closed on the residence in Fort Worth. On December 6, 2006, the Air Force Personnel Center made a tentative offer to Mr. Bush of a permanent position. Mr. Bush accepted the offer on that date. On December 20, 2006, the Government issued a written authorization for expenses (including real estate expenses) associated with the change in permanent duty station (PDS). On January 3, 2007, Mr. Bush received his official orders relating to the permanent change of station. Mr. Bush seeks payment of \$5585.16 incurred and paid for the purchase of the residence in Fort Worth.

Discussion

The Federal Travel Regulation (FTR), applicable to civilian agency employees, specifies that “reimbursement of any residence transaction expenses . . . that occurs [sic] prior to being officially notified (generally in the form [of] a change of station travel authorization) is prohibited.” 41 CFR 302-11.305 (2006). Although “travel authorization” is defined to mean written permission, official notification is not limited to notification through a writing.

The applicable Joint Travel Regulations (JTR) (regulations relative to travel and transportation allowances of Department of Defense civilian personnel) state that an eligible employee is authorized reimbursement for certain expenses incurred in connection with the sale of a residence at the old duty station and/or the purchase of a residence at the new duty station after the employee has signed the required transportation agreement. JTR C14000-A. The JTR have explicit provisions regarding the *sale* of a residence in anticipation of a transfer. Specifically, following the announcement of a base closure, an “employee is authorized reimbursement for real estate expenses incurred before, and in anticipation of, a transfer if a clearly evident administrative intent exists, at the time the expenses are incurred, to transfer the employee[.]” JTR C14000-D.1. The JTR lack a parallel provision for the reimbursement of expenses related to the *purchase* of a residence incurred before, or in anticipation of, a transfer, or related to the sale of a residence in instances unrelated to base closure. Thus, the base closure alone does not serve as a basis for reimbursement of costs associated with the purchase of a residence at a new duty station in anticipation of a new assignment.

Developed case law dictates:

Real estate transaction expenses are reimbursable only if the purchase or sale of a residence is incident to the employee's transfer. For that reason, we have established that when a contract for purchase or sale is entered into before an agency manifests 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; *Bernard J. Silbert*, B-202386 (Sept. 8, 1981) (although mindful that a reliable verbal notification of tentative selection to a position may be adequate for reliance, the Comptroller General concluded that there was no reliable notification at the time the employee became obligated to purchase the residence at the new duty station). This Board has applied this reasoning in holding that a contract for purchase equates to the incurrence of expenses related to purchase. *Gary J. Tennant*, CBCA 553-RELO (Apr. 10, 2007).

Mr. Bush entered into the contract to purchase the residence in Texas prior to receiving official notification of the location of his new permanent duty station; the July purchase pre-dates the tentative selection in November. Accordingly, the purchase, preceding notification, was not incident to the transfer.

The agency should deny reimbursement of the claimed expenses.

JOSEPH A. VERGILIO
Board Judge