



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

July 21, 2009

CBCA 1393-RELO

In the Matter of DANNETTE WOOD

Travis V. Olmert of Carter, Smith, Merriam, Rogers & Traxler, P.A., Greenville, SC, appearing for Claimant.

Cheryl Holman, Assistant Chief, PCS Travel Section, Department of Veterans Affairs, Austin, TX, appearing for Department of Veterans Affairs.

DRUMMOND, Board Judge.

Claimant, living together with spouse and not legally separated when notified of transfer, satisfies the initial requirement for full reimbursement of selling expenses.

Background

In October 2007, Ms. Wood was authorized an official change of duty station from Greenville, South Carolina, to Columbia, South Carolina, with a report date of January 20, 2008. As part of the move, Ms. Wood was authorized to sell her home and claim reimbursement for certain costs not to exceed 10% of the selling price. Her travel authorization listed three immediate family members: claimant's spouse and two children.

Prior to reporting to her new duty station, Ms. Wood was told by her agency that when she sold her house at her old duty station, she would be eligible to be reimbursed only fifty percent of certain costs associated with the sale because she owned the house with her separated spouse who does not qualify as a member of the immediate family. The agency believed that Ms. Wood had separated from her husband based upon a 2007 divorce action which was never pursued and subsequently dismissed with the parties having never legally separated. Factually and legally, Ms. Wood disputes the agency's determination.

Ms. Wood has filed detailed information addressing the requirements contained in the Federal Travel Regulation (FTR), at 41 CFR 302-11.101 (2007), for establishing a right to full reimbursement of real estate expenses associated with the sale of her residence at the old duty station. Her documentation provides, in part, as follows:

1. The transfer is part of a permanent change of station located within the United States.
2. Ms. Wood's Simpsonville, South Carolina residence was her primary residence and the type of residence described in FTR 302-11.100.
3. Prior to the date she was first notified of the transfer and on the date that she reported to her new duty station, Ms. Wood shared legal title to the residence in Simpsonville with her husband.
4. Although Ms. Wood did initiate a divorce action in 2007, she continued to live together with her husband in the same household, and there is no evidence of a legal separation as of the date that she reported to the new duty station.
5. During all times relevant, Ms. Wood's marital status remained the same from the inception of her marriage and her husband continued to be a member of her immediate family as defined in FTR 300-3.1.
6. Ms. Wood had not sold her home at the time she initiated this case, but expressed interest in doing so in the near future.

Discussion

Ms. Wood's entitlement to reimbursement of real estate transaction expenses is governed by statute and regulation. The applicable statute provides that title to a residence must be in the name of the employee alone or in the joint names of the employee and a member of his or her immediate family. 5 U.S.C. § 5724a(b)(6) (2006). The FTR is to the same effect. If title is held jointly with a person not a member of the immediate family, the employee's reimbursement will be on a pro-rata basis to the extent of the employee's actual title interest. 41 CFR 302-11.101 through 11.105. The FTR defines "immediate family" to include a spouse. 41 CFR 300-3.1. It is well-settled that if an employee and spouse are legally separated, the spouse is not a member of the employee's immediate family, and therefore, such a spouse does not fall within the FTR's definition of immediate family. Reimbursement of real estate expenses in such a case is limited only to the extent of the employee's interest in the real estate. *Marilyn Daterman*, GSBCA 1386-RELO, 97-1 BCA ¶ 28,880; *Mimi J. Sanchez*, B-231839 (Feb. 9, 1989); *Thomas G. Neiderman*, B-195929 (May 27, 1980). However, if title is jointly held by an employee and a member of his or her immediate family, allowable real estate transaction allowances are payable in full. 41 CFR 302-11.101(c).

Although we can certainly understand the agency's reluctance to promise in advance that Ms. Wood will receive reimbursement for 100% of the costs incurred in selling her residence, the record includes no evidence that Ms. Wood was legally separated from her husband at the time she reported to her new duty station. In the absence of evidence to the contrary, we conclude that Ms. Wood's marital status remained the same from the inception of the marriage and Mr. Wood continued to be a member of her immediate family.

Because Ms. Wood and her spouse were living together at their residence at the time Ms. Wood received notice of her transfer, and the two were not legally separated, Ms. Wood satisfies the initial test for full reimbursement. FTR 302-11.100. The agency reached the incorrect conclusion to limit recovery to 50%. However, the "legal title" and "immediate family" issues need to be revisited and resolved at the time of sale to determine allowability within the terms of statute and regulation.

JEROME M. DRUMMOND
Board Judge