



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

August 19, 2010

CBCA 1994-RELO

In the Matter of CAROL LUCIUS

Carol Lucius, Jacksonville, FL, Claimant.

Judy Hughes, Standards and Compliance, Finance Mission Area, Travel Pay, Defense Finance and Accounting Service, Department of Defense, Columbus, OH, appearing for Department of Defense.

STERN, Board Judge.

Carol Lucius, claimant, seeks reimbursement of real estate expenses associated with the sale of property she owned in Key West, Florida.

Background

During November 2004, claimant was transferred by the United States Navy from Key West, Florida, to La Maddalena, Italy. Claimant owned a home in Key West, which she did not sell at the time of her transfer overseas. Claimant's time in Italy (including an extension) was scheduled to end in May 2008. Toward the close of 2005, claimant learned through the media that the naval base in La Maddalena would be closing. A specific date for the closing was not announced at that time.

On July 27, 2006, claimant sold her home in Key West. An e-mail message from claimant in the record states that she sold the house as a result of the extension of her job assignment in La Maddalena. On September 8, 2006, the Department of Defense made the formal announcement of the closure of the La Maddalena base. The closure was to be effective February 28, 2008. As a consequence of the base closure, claimant, in September 2006, registered in the priority placement program (PPP) for job assignments. Claimant's office officially closed on December 15, 2007. Prior to the closure, claimant was transferred to a Department of Defense facility in Jacksonville, Florida. She was issued travel orders in

September 2007. These orders authorized reimbursement for real estate expenses. Thereafter, claimant submitted a claim for \$31,540 for real estate expenses associated with the sale of her property in Key West in July 2006. We are asked to determine whether those expenses are reimbursable to claimant.

Discussion

The Joint Travel Regulations (JTR) are applicable to this matter (as is the Federal Travel Regulation) since Ms. Lucius is a civilian employee of the Department of Defense. Those regulations authorize the payment to transferred civilian employees of certain expenses associated with the sale of a residence. JTR C5750. An employee completing a tour at a foreign station who is transferred to a station in the United States, other than his or her original duty station (prior to the foreign assignment), is authorized reimbursement of expenses associated with the sale of his or her property, as long as the sale occurs “following receipt of the official notification.” JTR C5750-D.2, -E.2. This regulation specifically warns:

b. Reimbursement. Each employee should be cautioned that reimbursement:

(1) Is not allowed for any real estate transaction that occurs prior to official notification that the employee’s return is to be a PDS [permanent duty station] other than the one from which transferred to the foreign PDS. A travel authorization transferring the employee from a foreign PDS to a PDS other than the one from which the employee was transferred to the foreign PDS ordinarily constitutes official notification. See 72 Comp. Gen. 130 (1993).

JTR C5750-E.2.b(1).

Here, Ms. Lucius sold her property prior to receipt of notification of transfer to a location other than Key West, the location she occupied prior to her overseas assignment. As a result, claimant is not entitled to reimbursement of the expenses associated with the sale of her property.

Our predecessor in deciding these cases denied reimbursement in similar situations. In *John W. Gray*, GSBICA 15484-RELO, 01-1 BCA ¶ 31,367, the General Services Board of Contract Appeals stated:

Statute and regulation are clear on the matter at issue: Despite the authorization for reimbursement of real estate expenses, the [agency] may not

reimburse claimant for the costs of selling his former home because that sale occurred before he was officially notified that his return to the United States would be to an official station different from the one from which he was transferred when assigned to his foreign post. The rule disallowing costs of sales which occur before an employee receives such official notification is enunciated in statute, 5 U.S.C. § 5724a(d)(3) (Supp. III 1997); the Federal Travel Regulation, which applies to all federal civilian employees, 41 CFR 302-6.1(g)(2) (1998); and the Joint Travel Regulations (JTR), which apply to civilian employees of the Department of Defense

Id. at 154,898. Furthermore, the expectation of transfer by claimant, even if likely, would be insufficient to meet the statutory and regulatory mandate requiring official notification. *Id.*; *Marilyn A. Whitworth*, GSBICA 15174-RELO, 00-1 BCA ¶ 30,811.

Ms. Lucius claims that the base closure announcement was the impetus for the sale of her property. We note that at the time of sale of her property in Key West, there was no formal announcement of base closure or intent to transfer claimant to Jacksonville. Claimant would not be entitled to reimbursement unless the sale occurred after she was officially notified of her transfer to a base other than Key West.

Ms. Lucius also claims that she was misled into believing that she would be reimbursed for the expenses of sale. We see no evidence to support this argument but note that the agency would not be permitted to pay these expenses, which are not authorized by law, regardless of the advice and actions of its employees. *Whitworth*, and cases cite therein.

Decision

The agency is not authorized to pay claimant's expenses associated with the sale of her house.

JAMES L. STERN
Board Judge