



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

January 4, 2012

CBCA 2608-RELO

In the Matter of JASON A. JOHNSON

Jason A. Johnson, York, PA, Claimant.

Erik J. Feustel, Office of the Staff Judge Advocate, Client Services Division, Department of the Army, Aberdeen Proving Ground, MD, appearing for Department of the Army.

WALTERS, Board Judge.

Claimant, Jason A. Johnson, seeks review of a decision by his agency, the Department of the Army (Army), denying him reimbursement of real estate expenses he incurred in purchasing a new home in connection with a permanent change of station (PCS). For the reasons explained below, we grant the claim.

Background

On November 9, 2005, the Army officially announced that, as part of the Base Realignment and Closure (BRAC) initiative, it would transfer certain functions from Fort Monmouth, New Jersey, to Aberdeen Proving Ground (APG), Maryland. By transfer of function (TOF) memorandum dated October 7, 2009, sent to claimant and others at Fort Monmouth, claimant was formally advised that his position had been identified for transfer to APG. In that TOF memorandum, claimant was given the opportunity within twenty-one days of receiving the memorandum to either accept or decline the transfer of his position. The memorandum stated that a declination would be irrevocable and that an acceptance could be revoked by claimant prior to the required reporting date specified by claimant's supervisor. Claimant, on October 16, 2009, executed the form the Army furnished, accepting the offered TOF.

The TOF memorandum stated that the function transfer to APG would be done "in phases" and that claimant's "supervisory chain" would advise him in writing of his move date and would provide him with his PCS orders approximately six months in advance of the

planned move. The memorandum is itself silent with regard to reimbursement of real estate or other PCS-related expenses. The Army contends that, during oral briefings presented to claimant and similarly situated individuals, it advised these employees that they were not to “incur PCS expenses until receipt of Department of Defense (DD) Form 1614” (the PCS travel orders). None of the briefing slides forwarded to the Board contain such a warning. It appears that a briefing was done in early November 2009, and a series of slides dated November 2009 indicate (on a slide entitled “Just the Facts . . .”) that “all personnel who accepted TOF will be offered PCS,” that “employees will be notified of their move date the week of Thanksgiving 2009,” and that “PCS orders [will be] issued 6 months prior to move date.” The November 2009 briefing slides further indicate that claimant’s group, Platoon B, would have a move date of January 30, 2011.

Claimant exchanged several email messages with his supervisor on March 8, 2010. The supervisor confirmed the January 30, 2011, move date for him. Claimant also received email notification from his PCS preparer at the Army’s personnel office on June 23, 2010, that his official PCS date was to be January 30, 2011. On July 1, 2010, claimant formally accepted and signed the agency’s transportation agreement, which likewise recited that PCS date. None of these notifications or forms included any further clarification regarding limitations on incurrence of PCS-related real estate expenses.

The Army has provided the Board with copies of internal Army email messages sent in March 2010, which clearly reflect the Army’s desire not to reimburse real estate expenses for employees who sign contracts before they have received their official PCS orders. Nevertheless, there is no evidence that copies of those email messages were ever forwarded to claimant or any of the employees being transferred. To the contrary, claimant avers that he did not receive copies and that they were not distributed to the workforce. Although acknowledging that employees, during the briefings, were advised not to incur costs prior to receipt of their PCS orders, claimant asserts that the instructions he received were general and vague and that he was not clear as to whether he could, if necessary, execute real estate agreements. Claimant states that employees were “provided references to the JTR [Joint Travel Regulations], DFAS [Defense Finance and Accounting Service] pamphlet and DFAS Real Estate Entitlements Guide and [the Army] instructed employees to review these sources for assistance.”

In August 2010, claimant states, he was told that, unless he signed a real estate purchase agreement that month, the house that he intended to have built in Maryland near APG would not be ready for him by his January 2011 move date. He says that he contacted DFAS Customer Service for assistance and was advised that, as long as he had received “notification/intent” of his transfer, he would be “eligible to receive real estate reimbursement.” In this regard, the DFAS website, which claimant had also consulted, provides the following guidance:

The general rule is that you may be reimbursed for real estate expenses incurred before, and in anticipation of a transfer, if a clearly evident administrative intent to transfer you exists at the time the expenses are incurred. Due to legal requirements, if the claimed expense was incurred before the travel authorization was issued or transportation agreement signed, DFAS-Columbus requires that a copy of written intent to transfer accompany the real estate claim, to authorize reimbursement (e.g., if you have been placed in the priority placement program, or you have formally accepted the offer to transfer). You must have a travel authorization (DD Form 1614) prior to submitting a claim for reimbursement of authorized expenses.

<http://www.dfas.mil/pcstravel/civentitlements/realestateandlease.html> (last visited January 3, 2012). Claimant states that he forwarded this DFAS advice to his PCS preparer by email and, though he also attempted to reach her by telephone, leaving numerous messages, he received no response.¹ Accordingly, on August 17, 2010, he proceeded to execute the real estate purchase agreement. He received his travel authorization (DD Form 1614) for the move to APG one month later, on September 17, 2010. Subsequently, claimant sought reimbursement for his closing costs for the new home, in the amount of \$6671.10, but the claim was denied, because the purchase agreement was executed in advance of his receipt of the DD Form 1614.

Discussion

The Government is required to reimburse federal employees for real estate expenses incurred that are incident to a transfer of station made in the Government’s interest. 5 U.S.C. § 5724a(d) (2006). In this regard, we have held that, even when an employee incurs real estate expenses prior to receiving travel orders, the employee may still be entitled to reimbursement, if the agency has manifested a “clear administrative intent to transfer the employee at the time the expenses were incurred.” *Jorge L. Gonzalez*, CBCA 984-RELO, 08-2 BCA ¶ 34,004, at 168,162, and cases cited therein. In other words, travel orders are not the sole indication of the agency’s intent, and reimbursement will be provided, so long as “a definite selection for the position has been made and all parties concerned had good reason to expect the transfer would be approved and effectuated.” *Gonzalez*, 08-2 BCA at 168,162; *see also Byron L. Wells*, CBCA 1206-RELO, 08-2 BCA ¶ 33,979. It has been recognized

¹ Later, claimant reports, he learned that the PCS preparer had left her position with the Army without any advance notice.

that even telephone contacts in which a definite offer is made, though contingent upon higher level approvals, may be sufficient to establish the requisite “administrative intent.” See *Brandon J. Thorpe*, CBCA 2103-RELO, 11-1 BCA ¶ 34,687, at 170,847, and cases cited therein.

In the present case, with the TOF memorandum in October 2009, claimant was provided official written notification that his position would transfer to APG as part of the BRAC initiative and that he had already been selected and approved to make the move as part of his group. The offer the Army extended him in that memorandum was both formal and in writing, and he accepted that offer in writing using the form that was furnished for acceptance. Moreover, the announcement and offer here were confirmed in email correspondence from his supervisory chain as well as in a formal transportation agreement that claimant executed.

The JTR authorize reimbursement of expenses incurred by an employee in connection with the purchase (including construction) of a resident at the new permanent duty station after the employee “has signed the required service agreement,” i.e., the transportation agreement. JTR C.5750-A; see *Joseph Bush*, CBCA 660-RELO, 07-1 BCA ¶ 33,560, at 166,225. In terms of the PCS authorization (the DD Form 1614), the JTR merely require that a PCS be authorized/approved “before expense reimbursement is authorized.” JTR C.5750-B. The regulations do not preclude reimbursement for any such expense which was incurred prior to issuance of the PCS orders. Here, we note that the Army’s motivation for insisting that a DD Form 1614 first be issued was not that, otherwise, reimbursement would be improper. Rather, the thought was that using DD Form 1614 issuance as the marker would alleviate the agency’s need to perform further inquiry to determine whether its intent to transfer an individual employee could be established through other means. In this regard, an email message from the Army’s attorney dated October 27, 2009, responding to the “real estate reimbursement question,” is particularly instructive:

In my opinion, your employees would best be served by coordinating their sales and purchases with their leadership to ensure a DD1614 is in place so the Fort Monmouth claims office or our office is not required to review other assorted documents in an attempt to establish when and if your agency intended individual employees to move.

Unlike the situation in *Thorpe*, where the Board found an alleged telephone conversation with an agency supervisor inadequate as evidence of agency intent to transfer without further documentary corroboration, here the documentation renders the Army’s intent with respect to claimant’s transfer clear and unmistakable. Under these circumstances, denial of reimbursement of claimant’s home purchase-related costs was incorrect.

Decision

The claim is granted.

RICHARD C. WALTERS
Board Judge