



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

March 28, 2013

CBCA 3110-RELO

In the Matter of MICHAEL R. BISCHOFF

Michael R. Bischoff, Clovis, NM, Claimant.

Maurice Sims, Chief, PCS Processing Unit, Headquarters Air Force Personnel Center, Department of the Air Force, Randolph Air Force Base, TX, appearing for Department of the Air Force.

DANIELS, Board Judge (Chairman).

The Government sometimes transfers an employee from a post of duty within the United States to posts abroad, and then transfers him back to the United States, but to a different location from the one at which he previously worked. As prescribed by statute, an employee who is relocated in this manner is entitled to be reimbursed for the expenses he incurs in selling his residence at his previous United States duty station – but only if the residence was sold after the employee was officially notified of his transfer back to this country.

Background

This issue is raised by a case filed by Michael R. Bischoff, an employee of the Department of the Air Force. The Air Force transferred Mr. Bischoff in September 2009 from Arkansas to Japan. His travel orders did not provide for reimbursement of real estate transaction expenses. He asked an agency personnel technician about the matter and received in response the following e-mail message: “When you travel to a foreign location, you are not entitled to real estate until you return PCS [permanent change of station] to the CONUS [continental United States] to a different location other than Little Rock.”

Mr. Bischoff tells us that after leaving Arkansas, he had no desire to return there. In December 2009 sold the house in which he had lived while working in that state.

In October 2012, the Air Force transferred Mr. Bischoff again, this time to New Mexico. On this occasion, his travel orders did provide for reimbursement of real estate transaction expenses. Upon reporting for duty in New Mexico, he submitted a voucher for reimbursement of the expenses he had incurred in selling his Arkansas residence. The Air Force refused to provide reimbursement, on the ground that he had submitted the request more than two years after he had received the orders transferring him to Japan.

Discussion

Mr. Bischoff interpreted the e-mail message he received from the personnel technician to mean that if he sold his Arkansas residence after being transferred to Japan, he could be reimbursed for his transaction expenses as soon as he was transferred back to the United States, to a location other than Little Rock. He believes that the time limitation cited by the Air Force should have been four years, not two, and since he submitted his voucher within four years of his transfer from Arkansas, the agency should accept it.

Neither party to this dispute understood the law correctly (until finally, in its response to the claim, the agency hit upon the right ground for denying the claim).

The time limitation for reimbursement of real estate expenses, which is established in the Federal Travel Regulation and repeated in the Defense Department's Joint Travel Regulations (JTR), pertains to transactions which are eligible for reimbursement. In September 2009, when Mr. Bischoff reported for duty in Japan, the limitation was four years from the date the employee reported for duty at his new duty station (the home sale had to occur within two years after that date, plus as much as two more years if the agency extended the period for reasons beyond the employee's control and acceptable to the agency). 41 CFR 302-11.21, .22 (2009); JTR C5750-C (Sept. 2009). In October 2012, when he reported for duty in New Mexico, the limitation was two years (one plus as much as one more). 41 CFR 302-11.21, .22 (2012); JTR C5750-C (Oct. 2012). An employee's entitlements and allowances for relocation are "determined by the regulatory provisions that are in effect at the time [the employee] report[ed] for duty at [the employee's] new official station." 41 CFR 302-2.3 (2009, 2012). Consequently, if Mr. Bischoff had a right to reimbursement based on his posting to Japan, the time limitation would have been four years, not two, after he reported for duty there. (The beginning date for the eligibility period would not have been, as the Air Force initially thought, when he received the orders to report to Japan.)

Whatever the limitation was, however, it has no bearing on whether the Air Force should reimburse Mr. Bischoff for the expenses he incurred in selling his house in Arkansas. This is because statute precludes any reimbursement at all. As stated in section 5724a(d)(2) of title 5, United States Code, when an employee who was previously transferred abroad is transferred back to the United States, unless he returns to the post to which he was previously assigned, he will be reimbursed for the expenses he incurs in selling his residence at that previous United States assignment. However – and the proviso is critical to this case – “[r]eimbursement . . . shall not be allowed for any sale . . . that occurs prior to official notification that the employee’s return to the United States would be to an official station other than the official station from which the employee was transferred when assigned to the post of duty outside the United States.” 5 U.S.C. § 5724a(d)(3) (2006). The JTR reiterate this rule, JTR C5750-E.2, and by not authorizing real estate transactions for the transfer to Japan, the travel orders issued to Mr. Bischoff on that occasion were faithful to it. The Air Force personnel technician’s e-mail message, while not crafted as artfully as one might like, accurately conveyed the relevant information.

When Mr. Bischoff left Arkansas, he may have wanted not to return, but he was not officially notified that he would not return. The official notification was not issued until 2012, when he received orders to report to New Mexico. This was well after he had sold his former residence in Arkansas. Mr. Bischoff is therefore ineligible for reimbursement of the expenses he incurred in selling the house. *See, e.g., Joyce A. Augustyn*, CBCA 1449-RELO, 09-2 BCA ¶ 34,142; *Domenicangelo D’Angella*, GSBCA 16704-RELO, 06-1 BCA ¶¶ 33,152, *reconsideration denied*, 06-1 BCA ¶ 33,171 (2005); *Donald W. Owens*, GSBCA 16533-RELO, 05-1 BCA ¶ 32,875.

As demonstrated by the *Augustyn* case, Mr. Bischoff is hardly the first government employee to think that the current policy is unreasonable in forcing employees who own their homes and are transferred overseas to make a choice between two unfortunate options – retain the former residence while on duty abroad, renting it to others and being responsible for it from afar, or sell the residence and incur the transaction expenses without possibility of reimbursement. Whether the policy is reasonable or not, however, it has been established by law. Employees and agencies must comply with it, and the Board must follow it in settling employee relocation benefit claims.

STEPHEN M. DANIELS
Board Judge