



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

October 23, 2013

CBCA 3366-RELO

In the Matter of BRIAN L. KORZAK

Brian L. Korzak, Fairfax, VA, Claimant.

Diane Foose, Associate Legal Advisor, Immigration and Customs Enforcement, Department of Homeland Security, Washington, DC, appearing for Department of Homeland Security.

SOMERS, Board Judge.

Background

The Department of Homeland Security, Immigration and Customs Enforcement (ICE), issued orders transferring employee Brian L. Korzak (claimant) from Buffalo, New York, to Ottawa, Ontario, Canada. Mr. Korzak's orders authorized reimbursement for property management services for his residence in Williamsville, New York, during his assignment in Canada.

On May 22, 2008, Mr. Korzak entered into an agreement with Primacy Relocation, LLC (Primacy) for property management services for three years at the agency's expense. The agreement stated, in pertinent part, "Owner acknowledges that Owner is ultimately responsible for payment of all maintenance, utilities, repairs, and other property expenses that may be incurred." It details services to be performed, stating:

In the event of an emergency, Primacy shall coordinate services necessary to prevent further damage to the Property, protect life or avoid disruption of vital services as prescribed by law. No prior approval shall be required for said emergency repairs. Property Manager shall notify Primacy within 48 hours of said emergency repairs and shall provide written documentation for all services and/or repairs performed in the event of said emergency. Upon receipt of proper documentation the cost of these services shall be reimbursed to the Property Manager.

The agreement also required Mr. Korzak to maintain homeowner's insurance for the property.

Mr. Korzak moved his family to Ottawa and started duty on August 3, 2008. According to Mr. Korzak, he received a call on December 6, 2008, notifying him that his New York residence was on fire. The fire destroyed his home. His insurance company deemed it a total loss.

Shortly thereafter, Primacy notified Mr. Korzak that it could no longer provide property management services because the oversight of demolition and construction was outside the scope of its contract.

Claimant contends that ICE, the Bureau of Public Debt, and Primacy all informed him that there was no mechanism or contingency plan for properties destroyed while under the care of the government property management program. Because claimant was still on duty in Ottawa, he felt his only recourse was to hire a public adjusting company, National Fire Adjustment Company (NFA), to oversee the emergency enclosure and demolition and to represent him in meetings, inspections, and events requiring prompt attention. Claimant ultimately paid NFA \$25,375.89 for these services.

On January 22, 2009, ICE denied claimant's requests for continued property management services during reconstruction and for reimbursement for the costs of hiring the adjuster. On April 30, 2013, claimant filed this claim for relief under the Meritorious Claims Act, 31 U.S.C. § 3702(d) (2006), for reimbursement of the NFA adjuster fees totaling \$25,375.89.¹

¹ Mr. Korzak is no longer seeking property management services during the period of time that his property could not be rented because it was uninhabitable due to the extensive damage caused by the fire.

Discussion

The Meritorious Claims Act, 31 U.S.C. § 3702(d), authorizes the Administrator of General Services to recommend that Congress take action for legal or equitable reasons to make an employee whole on a claim that may not be paid by using an existing appropriation. The statute provides in pertinent part that “the official responsible under subsection (a) for settling the claim shall report to Congress on a claim against the Government that is timely presented under this section that may not be adjusted by using an existing appropriation, and that the official believes Congress should consider for legal or equitable reasons.” *Id.* Under 31 U.S.C. § 3702(d), the Administrator of General Services is the “official responsible” for settling employees’ relocation claims against the Government. The Board refers claims to the Administrator of General Services with a recommendation for further referral to Congress in extraordinary cases when appropriate. *See, e.g., Lori L. Rogers*, CBCA 2425-TRAV, 11-2 BCA ¶ 34,877.

The standard used by the Board for such referral has been best described in the case of *Roy Katayama*, GSBCA 15605-RELO, 01-2 BCA ¶ 31,542:

We will not apply a hard and fast rule when we determine whether equitable considerations compel us to conclude that a claim is meritorious. In reaching our decisions, we will consider and balance several factors. At the outset, we recognize that deeming a claim “meritorious” is highly extraordinary We will look to see whether the claim presents equitable considerations of an unusual nature which are unlikely to constitute a recurring problem. We will consider whether an agency directed an employee to incur the claimed expenses. We will also consider whether an agency’s actions caused an employee to incur the claimed expenses. We may also consider other factors, as warranted by the circumstances presented by individual claims.

Thus, claims have been referred to the Administrator when a claimant has demonstrated that he or she properly relied on agency action and the agency was solely at fault. *See David C. McCord*, GSBCA 14944-RELO, 99-2 BCA ¶ 30,505; *Terry M. Neeley*, GSBCA 14930-RELO, 99-2 BCA ¶ 30,496; *Joseph A. Curtis*, GSBCA 13823-RELO, 97-1 BCA ¶ 28,935. On the other hand, where employees have incurred the costs at issue in a claim because of personal decisions which conferred benefits on those employees, we

have not considered such claims meritorious. See *Daniel C. Schofield*, GSBGA 15531-RELO, 01-2 BCA ¶ 31,560; *McCord*.²

Here, Mr. Korzak asserts that the destruction of his property while under a property management program is a highly extraordinary circumstance that is not likely to recur. Mr. Korzak notes that he paid \$25,375.89 for the NFA adjuster to oversee the reconstruction of his damaged residence, which is not an expense contemplated under the Federal Travel Regulations. Mr. Korzak asserts that this expense is precisely the type of unforeseen expenditure that the Meritorious Claims Act was designed to rectify.

The agency does not support Mr. Korzak's request for relief. The agency notes that Mr. Korzak's residence was covered by homeowner's insurance and that he received monetary relief for the loss/damage to his home in the form of an insurance settlement. Second, the NFA's adjuster's fee is a personal expense. Mr. Korzak hired the NFA adjuster to protect his interest in matters between him and his insurance company. Finally, the fact that an employee's home had been significantly damaged by fire or otherwise is not an extraordinary circumstance that merits special Congressional relief.

We agree that while the damage to Mr. Korzak's home is unfortunate, Mr. Korzak's expenses did not arise from an extraordinary circumstance meriting relief under the Meritorious Claims Act. Mr. Korzak chose to hire the private adjuster to protect his interests during the reconstruction of the house. Mr. Korzak has not shown that he relied upon agency action, or that the agency could be deemed at fault for causing him to incur this expense.

² Some of these cases arose during a time period when the General Services Board of Contract Appeals (GSBCA) issued decisions under a test program conducted pursuant to authority vested in the Administrator of General Services by 5 U.S.C. § 5739 (2000), which empowered General Services Administration's Deputy Associate Administrator, Office of Transportation and Personal Property, to grant administrative relief of claims which could not be paid due to statutory or regulatory restrictions, but ought to be honored for equitable reasons. Although the test program and the special authority it provided to the Deputy Associate Administrator has ended, the Civilian Board of Contract Appeals retains the ability originally possessed by the GSBCA to refer extraordinary claims to the Administrator of General Services for further referral to Congress under the Meritorious Claims Act.

Decision

We decline to refer this matter for consideration under the Meritorious Claims Act.

JERI KAYLENE SOMERS
Board Judge