



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

April 10, 2013

CBCA 3247-RELO

In the Matter of JACK C. JACOBS

Jack C. Jacobs, Mount Laurel, NJ, Claimant.

Phillip D. Hendrick, Acting Chief, Travel Section, National Finance Center, Customs and Border Protection, Department of Homeland Security, Indianapolis, IN, appearing for Department of Homeland Security.

WALTERS, Board Judge.

The claimant, Jack C. Jacobs, an employee of the Department of Homeland Security, U.S. Customs and Border Protection (CBP), in October 2011, was transferred from a position at the Philadelphia International Airport, Philadelphia, Pennsylvania, to a new duty station at the National Targeting Center, Reston, Virginia. The transfer to the new position, though officially designated as a permanent change of station (PCS), is described as a "Not to Exceed 3 year temporary assignment. The assignment was to be in three one year increments, and Mr. Jacobs was to have "the right to request to be sent back to [his] original duty station of Philadelphia, PA." Mr. Jacobs incurred expenses during the fall of 2011 in conjunction with the transfer and, on December 22, 2011, the agency approved payment to Mr. Jacobs totaling \$23,260.13 in reimbursement of the following expenses: (1) \$1726.38 for a househunting trip, (2) \$39.95 for en route travel, (3) \$13,335 for temporary quarters subsistence expenses (TQSE), (4) \$1300 for a miscellaneous expense allowance, (5) \$345 for "consulting fee," and (6) \$6513.80 in a withholding tax allowance to cover taxes due on the other accounts. Mr. Jacobs stayed in hotels from his first day at the new duty station until the beginning of February 2012, at which point he entered into a one year lease for an apartment in Reston,

Virginia. He remained there, commuting daily between the apartment and the Reston duty station, until February 2013.

Mr. Jacobs, in December 2011, listed for sale his residence on Buckingham Way in Mount Laurel, New Jersey. That residence was located some 28.2 miles from his old duty station at the Philadelphia International Airport and some 167 miles from the new duty station in Reston, Virginia. The Buckingham Way residence eventually was sold at the end of January 2013, after being on the market for approximately one year and one month. While in the Reston apartment, from February 2012 through February 2013, Mr. Jacobs states, he and his wife were “actively looking for suitable permanent housing” for their family. Because of the potential that his “temporary” assignment in Reston might be cut short by the agency in light of the Government’s fiscal difficulties, Mr. Jacobs indicates, the Jacobses did not restrict their search to the area proximate to the Reston duty station, i.e., Virginia, Maryland, and the District of Columbia, but also looked at homes in Delaware and New Jersey. Ultimately, Mr. Jacobs states, “after making an earnest effort to find suitable living residence and researching the [Reston] area,” they decided that buying a home proximate to the Reston duty station for a variety of reasons would not be feasible for them and that purchasing another home in Mount Laurel would be “best for our family.”

On June 30, 2012, Mr. Jacobs and his wife acquired a home on Watson Drive in Mount Laurel, New Jersey. That home is located only approximately 0.8 miles from the location of the old residence and no closer to Mr. Jacobs’ new duty station than was the residence on Buckingham Way, i.e., it too is located 167 miles from the Reston duty station. Mr. Jacobs is claiming entitlement to reimbursement for a total of \$14,500, consisting of \$2500 in moving costs incurred to move the family’s household goods from Buckingham Way to Watson Drive, plus the real estate closing costs incurred in the sale of the Buckingham Way residence and purchase of the Watson Drive residence, \$3000 and \$9000, respectively. Since February 2013, Mr. Jacobs states, he has been commuting daily from the new home in Mount Laurel, New Jersey, to his duty station in Reston, Virginia. At this point, Mr. Jacobs advises, in light of the current “circumstances,” in “trying to get CBP to honor its contractual agreements,” he has exercised his rights and has requested that he be returned to his original duty station in Philadelphia.

In addition to rejecting Mr. Jacobs’ claim for \$14,500, the agency seeks a refund from Mr. Jacobs of the \$23,260.13 that had been paid to him in December 2011. In this regard, the agency argues that Mr. Jacobs had never intended to relocate to the Reston area and had always viewed his transfer as “temporary [duty] for 1 year.” Mr. Jacobs strenuously takes issue with the agency’s position, maintaining that his intention was to acquire housing in the Reston area, if at all feasible, and that the househunting trip and other expenses he incurred in 2011, and his execution of an apartment lease in Reston in February 2012 and his living

in that apartment for a year, all were aimed at that purpose. Mr. Jacobs provides copies of email correspondence to him in March and April 2012, forwarding suggestions for housing possibilities in Upper Marlboro, Maryland, a community about forty miles from Reston. He also states that he had been advised that there was no specific mileage or distance requirement for the acquisition of a new home and had been assured repeatedly by several agency representatives that he would qualify for reimbursement of his real estate expenses in acquiring a new home in New Jersey.

Discussion

The Government is required to reimburse federal employees for real estate expenses that are incurred incident to a transfer of station made in the Government's interest. 5 U.S.C. § 5724a(d) (2006); *Jason A. Johnson*, CBCA 2608-RELO, 12-1 BCA ¶ 34,914. In terms of the \$23,620.13 of expenses incurred in the fall of 2011 for which claimant received reimbursement in December 2011, the evidence in the record, including the contemporaneous email messages to Mr. Jacobs containing suggestions for possible homes in closer proximity to the Reston work station, leads us to conclude that Mr. Jacobs had been seriously exploring those housing possibilities, at least as late as April 2012. The agency's assumption that Mr. Jacobs never intended to relocate to the Reston area appears to be unfounded. Accordingly, it would be inappropriate to insist that the \$23,260.13 be repaid, since the expenses involved were clearly incident to Mr. Jacobs' transfer.

The Federal Travel Regulation requires reimbursement of real estate transaction expenses incurred in the "sale of one residence at the employee's old official station and/or the purchase of a residence at the new official station." 41 CFR 302-11.1(a) (2012). Claimant is correct that there is no distance requirement specified for the new residence in order to recover real estate transaction expenses. Still, in addition to the regulation calling for reimbursement only if the employee actually commutes to and from the residence in question on a daily basis, 41 CFR 302-11.100, *see Robert L. McCall*, CBCA 1247-RELO, 08-2 BCA ¶ 33,998 and cases cited therein, to qualify for reimbursement, the new residence needs to be "nearer, or at least substantially reduce the commute, to the new duty station." *Marko Bourne*, GSBCA 16273-RELO, 04-1 BCA ¶ 32,544 (2003) (citing *John C. Burton*, GSBCA 15991-RELO, 03-2 BCA ¶ 32,328, and *Vincent P. Mokrzycki*, GSBCA 16142-RELO, 04-1 BCA ¶ 32,468 (2003)).

Here, although it is not disputed that Mr. Jacobs has been commuting on a daily basis from the residence on Watson Drive in Mount Laurel, New Jersey, to his duty station in Reston, Virginia, the Watson Drive home is not "nearer" to the Reston duty station than was the home on Buckingham Way, and does not appreciably, let alone "substantially," reduce

his commute to the Reston duty station. Indeed, both homes are located 167 miles from the Reston duty station. This was certainly known to Mr. Jacobs in June 2012, when he purchased the Watson Drive home, and there was no benefit achieved in terms of reducing the commute by proceeding with the sale of the Jacobses' old home (which was not consummated until months later, in January 2013) and the purchase of the new home in Mount Laurel. The \$14,500 of expenses incurred in selling the old home, purchasing the new home, and moving household goods from one to the other, therefore, cannot be said to have been incident to the transfer. Under such circumstances, notwithstanding any advice Mr. Jacobs may have received to the contrary,¹ those expenses are not recoverable.

Decision

Claimant is entitled to retain the \$23,260.13 previously paid him. His claim for an additional \$14,500 is denied.

RICHARD C. WALTERS
Board Judge

¹ As Mr. Jacobs himself acknowledges, this Board repeatedly has held that detrimental reliance on erroneous advice from government officials will not confer on a claimant entitlement to recovery, where there is no authority under statute and regulation for the relief being sought. *Lisa A. Lindman*, CBCA 2893-RELO, 13 BCA ¶ 35,230, at 172,842, and cases cited therein.