



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

August 29, 2014

CBCA 3670-RELO

In the Matter of STEVEN M. CORMIER

Steven M. Cormier, Fort Leavenworth, KS, Claimant.

J. Andrew Pollock, Office of the Staff Judge Advocate, United States Army, Fort Leavenworth, KS, appearing for Department of the Army.

POLLACK, Board Judge.

After completing his tour of duty in Germany as a civilian employee of the Department of the Army (Army), claimant, Steven M. Cormier, was relocated by the Army to a position in the continental United States (CONUS). As part of the transfer, Mr. Cormier seeks reimbursement for real estate transaction expenses incurred in connection with the purchase of a home at his new duty station. The Army refused to reimburse Mr. Cormier, asserting that under the Department of Defense (DoD) Joint Travel Regulations (JTR) he must be classified as a local hire while in Germany. As a local hire, he was ineligible for reimbursement of the real estate expenses claimed. Mr. Cormier asks this Board to review the agency's refusal to reimburse his real estate transaction expenses.

Background

In June 2009, Mr. Cormier was appointed to a civilian position as a human resources specialist to a post in Heidelberg, Germany. Prior to this initial civilian appointment, Mr. Cormier had been residing in Germany, serving in the military. He took the civilian position upon his retirement from the service, his official retirement taking place on July 31, 2009. Mr. Cormier had resided in Florida, prior to being deployed to Germany in his military capacity. There is no dispute that by the time of his civilian appointment, Mr. Cormier had completed the agreed upon tour of duty with the military that had initially brought him to Germany.

In August 2013, Mr. Cormier received permanent change of station (PCS) orders to Kansas. In conjunction with that, a human resources specialist at the Fort Leavenworth duty station indicated on Mr. Cormier's travel relocation request form that certain real estate expenses, incurred as a result of this relocation, would be authorized.

Mr. Cormier incurred various real estate expenses and submitted a claim to the Army for reimbursement, seeking \$3384.55 in expenses paid toward the purchase of his residence at the new duty station.¹ After several reviews, the Army ultimately rejected the claim, finding that under JTR C5750-D.3, Mr. Cormier was ineligible for the real estate allowances that had been indicated by the Leavenworth official.

In rejecting his claim, the Army stated that it considered Mr. Cormier to be a local civilian hire in Germany, and under the JTR, Mr. Cormier was ineligible for reimbursement of real estate expenses. Mr. Cormier maintains that he was not hired "locally," but instead was hired "overseas," and therefore is not prohibited from reimbursement. He contends he is eligible for reimbursement under JTR C5750-D.2, since D.2 provides that once an employee completes his tour of duty at a foreign permanent duty station (PDS) and is transferred back to the United States, the employee qualifies for real estate reimbursements.

Title 5 of the United States Code provides at Section 5724a(d) the following:

(1) Under regulations prescribed under section 5738, an agency shall pay on behalf of an employee who transfers in the interest of the Government expenses of the sale of the residence (or the settlement of an unexpired lease) of the employee at the old official station and purchase of a residence at the new official station that are required to be paid by the employee when the old and new official stations are located within the United States.

(2) Under regulations prescribed under section 5738, an agency shall pay on behalf of an employee who transfers in the interest of the Government from a post of duty located outside the United States to an official station within the United States (other than the official station within the United States from which the employee was transferred when assigned to the foreign tour of duty).

(A) expenses required to be paid by the employee of the sale of the residence (or the settlement of an unexpired lease) of the employee at

¹ These expenses included legal fees, a lender's appraisal fee, credit reporting fees, mortgage title policy fees, and mortgage taxes, as well as other incidental expenses associated with the purchase of the residence in Fort Leavenworth.

the old official station from which the employee was transferred when the employee was assigned to the post of duty located outside the United States, and

(B) expenses required to be paid by the employee of the purchase of a residence at the new official station within the United States.

The above cited statute has been implemented for civilian employees of DOD in JTR Chapter 5. Concerning transfers from foreign duty locations to CONUS, JTR C5750-D provides in pertinent part:

D. Transfer from a Foreign PDS to a CONUS/Non-foreign OCONUS PDS.

....

2. Applicability

a. An employee who has completed an agreed upon tour of duty at a foreign PDS and is reassigned/transferred to a different CONUS/non-foreign OCONUS PDS (other than the one from which transferred when assigned to the foreign PDS) is authorized reimbursement under this Part.

b. The distance between the former and new CONUS/non-foreign OCONUS PDS must meet the criteria in par. C5080-F for change of station within the same city/area.

3. Ineligible Employee. An employee who was not initially an employee who after signing a service agreement ICW [in connection with] a transfer from a PDS in CONUS/non-foreign OCONUS area to the foreign PDS, was moved to the foreign PDS at GOV'T expense under a civilian PCS [permanent change of station] travel order is not eligible for real estate allowances. The following are ineligible.

a. A locally hired employee in par. C5566-E2a(1) (former member of U.S. armed forces).

b. A locally hired employee in par. C5566-E2a(2) unless the individual was a civilian employee of an agency who

initially transferred from a PDS in CONUS/non-foreign OCONUS area to the foreign area PDS;

c. A locally hired employee in par. C5566-E2b(2) (employee who accompanied or followed the spouse to the OCONUS area); and

d. An employee hired in CONUS/non-foreign OCONUS area for assignment to a first PDS and the PDS is in a foreign area.

In *Randy Prewitt*, CBCA 1548-RELO, 09-2 BCA ¶ 34,253, this Board dealt with an almost identical situation to that before us here. In that decision, the Board stated:

Mr. Prewitt is a locally hired employee under the JTR, and therefore he is not eligible to be reimbursed for his real estate expenses. While it is true that Mr. Prewitt was first transferred from the United States to Germany when he was in the Army, he retired from the Army and then accepted employment as a civilian while still living in Germany. These events qualify Mr. Prewitt as a local hire. As a local hire, under the JTR, Mr. Prewitt is ineligible for reimbursement of his real estate transaction expenses. 5 U.S.C. § 5724(d)(2); 41 CFR 302-11.2(b); JTR C5750-D3a.

Mr. Cormier's situation clearly comports with the facts in *Prewitt*. Our predecessor board in considering these matters consistently decided that local hires (those taking an initial civilian position while overseas) were ineligible. See *Dennis Fijalkowski*, GSBCA 15683-RELO, 02-1 BCA ¶ 31,754; *Marsha A. Devine*, GSBCA 14878-RELO, 99-2 BCA ¶ 30,498; *Theresa F. Zuber*, GSBCA 13851-RELO, 97-1 BCA ¶ 28,878.

Mr. Cormier has asserts that JTR C5750-D.2.a generally states that an employee who completes an agreed upon tour of duty and is transferred to a different non-foreign PDS is authorized reimbursement. Mr. Cormier contends that since there is nothing in that language which directly addresses or prohibits payment for real estate expenses, we should give the wording an expansive rather than a restrictive meaning and allow for real estate reimbursements. The problem with Mr. Cormier's position is that it would require us to read out of the regulation the clear prohibition as to local hires. That is simply not permitted.

Finally, while we are sympathetic with Mr. Cormier to the extent he relied on advice from a travel official, we have no authority to correct that situation. The law is clear that even where advice was erroneous, we cannot order payment, as the unauthorized action of

a government employee, which includes wrong advice, cannot be ratified, if the payment is prohibited by law. *Ramsay D. Lockwood*, CBCA 3556-RELO, 14-1 BCA ¶ 35,560.

Decision

Accordingly, the agency's decision to deny Mr. Cormier's reimbursement of real estate expenses was proper. Mr. Cormier's claim is denied.

HOWARD A. POLLACK
Board Judge