



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

November 4, 2014

CBCA 4082-RELO

In the Matter of ROBERT J. COOKE

Robert J. Cooke, Florham Park, NJ, Claimant.

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

SOMERS, Board Judge.

Claimant, Robert J. Cooke, a supervisory agent with the Department of Homeland Security, Immigration and Customs Enforcement (ICE or the agency), seeks reimbursement for relocation expenses associated with the sale of his house located in Downingtown, Pennsylvania. The agency denied Mr. Cooke's claim because he did not meet the requirements for reimbursement. For the reasons stated below, we conclude that the agency properly denied Mr. Cooke's claim.

Background

In June 2007, Mr. Cooke transferred from Newark, New Jersey, to Washington, D.C. At the time of this transfer, Mr. Cooke purchased a house in Downingtown, Pennsylvania, located approximately 135 miles from Washington, D.C.

In 2008, Mr. Cooke accepted a position at the ICE office located at the United States Embassy in Rome, Italy. In connection with the transfer, Mr. Cooke completed a document

entitled “Relocation to a Foreign Duty Station Transfer Questionnaire Form.” In response to questions related to the sale or purchase of real estate, Mr. Cooke answered as follows:

Is this [referring to the house in Pennsylvania] the home that you currently reside (commute to and from on a daily basis?)

Yes _____ No x

If no, provide explanation: I rent an apartment in Washington, D.C.

Mr. Cooke repeated that explanation in response to another question on the same Questionnaire on the topic of property management.

In 2013, the agency transferred Mr. Cooke from Italy to Newark, New Jersey. At that time, Mr. Cooke sold the house in Pennsylvania. He is currently renting a townhouse in Florham Park, New Jersey.¹

Mr. Cooke seeks \$27,774.57 in real estate expenses incident to the sale of his Pennsylvania house. When the agency denied Mr. Cooke’s claim, he filed an appeal with the Board.

Discussion

Statute provides that –

an agency shall pay to or on behalf of an employee who transfers in the interest of the Government from a post 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) . . . expenses required to be paid by the employee of the sale of the residence . . . of the employee at 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.

5 U.S.C. § 5724a(d)(2) (2012). The implementing Federal Travel Regulation (FTR) specifies that a federal employee may receive reimbursement for the sale of a residence from

¹ Notably, the Pennsylvania house was closer to his new assignment in Newark, New Jersey, than to his previous post in Washington, D.C.

which the employee commutes “to and from work on a daily basis . . . at the time you were officially notified by competent authority to transfer to a new official station.” 41 CFR 302-11.100 (2013) (FTR 302-11.100). The FTR also provides that when the “transfer is from a foreign area to an official station within the United States other than the one you left when you transferred out of the United States,” the residence in question is the one from which the employee commuted on a daily basis at his previous United States assignment. FTR 302-11.5.

In this case, at the time Mr. Cooke received notification of his transfer to Italy, he admitted that when he was at his previous United States assignment in Washington, D.C., he did not commute to and from work on a daily basis from the house in Pennsylvania. Rather, as he stated in his questionnaire, he commuted from an apartment that he rented in Washington, D.C. Therefore, the regulations do not permit the agency to reimburse Mr. Cooke because he does not meet their criteria for reimbursement. *See, e.g., Linda Cashman*, CBCA 3495-RELO, 14-1 BCA ¶ 35,535 (claimant did not commute daily from Tuscaloosa to Seattle and therefore was not eligible for reimbursement of the expenses of selling a home in Tuscaloosa); *Connie J. Holliday*, CBCA 1866-RELO, 10-1 BCA ¶ 34,439 (claimant did not commute regularly to and from work from her Texas home because she commuted from her mother’s home during the week and returned to Texas on the weekend); *William D. Phillips*, GSBCA 15514-RELO, 02-1 BCA ¶ 31,697 (2001) (claimant’s house in Texas was not a residence for reimbursement purposes, even though his family lived there and it was his permanent residence, because he did not commute to and from that house on a daily basis).

Mr. Cooke contends that the agency denied his claim because he did not physically occupy his Pennsylvania house when he was stationed in Italy, thus ignoring the rules for transfers from foreign duty posts. Mr. Cooke is incorrect. The agency properly applied the regulation when it denied Mr. Cooke’s claim on the basis that he did not commute on a daily basis from the Pennsylvania house to his assignment in Washington, D.C.

Decision

The claim is denied.

JERI KAYLENE SOMERS
Board Judge