



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

March 31, 2014

CBCA 3556-RELO

In the Matter of RAMSEY D. LOCKWOOD

Ramsey D. Lockwood, Montrose, CO, Claimant.

Susannah Thomas, Office of the Regional Solicitor, Department of the Interior, Salt Lake City, UT, appearing for Department of the Interior.

STERN, Board Judge.

In October 2011, the Department of the Interior, Bureau of Reclamation (Interior), offered claimant a position in Interior's office in Montrose, Colorado. Claimant was not a government employee at the time of the offer and his acceptance of this position. Claimant moved to Colorado from Choctaw, Oklahoma, to commence his employment.

While certain of the documentation (including a "Notification of Personnel Action" form (SF-50)) prepared by Interior indicated that claimant was a new appointee who was not transferring from a current government job, the travel authorization and some supporting documents mistakenly treated claimant's hiring status as that of a transferee from a prior government position. In accordance with claimant's classification as a transferred employee, claimant was authorized to be reimbursed real estate transaction expenses. The paperwork stated that claimant would be reimbursed for sales transaction expenses if the transactions were completed within a period of two years. This period was represented as being extendable to three years. Based on this information, claimant entered into an eighteen-month lease-purchase transaction with a buyer of his home in Oklahoma. The purchaser was unable to complete the transaction within the prescribed period, and, therefore, claimant seeks an extension of the period to three years.

When Interior learned of its error in classification in 2013, it notified claimant that as a new appointee he was not entitled to be reimbursed real estate expenses. Claimant states that he is entitled to the expenses and to an extension to complete the sale of his home, since, he claims, he was misled by Interior personnel. Claimant seeks relief from the Board on the basis that Interior classified his employment as that of a transferee and that Interior authorized the reimbursement of relocation expenses, including those related to the sale of his former residence. Claimant states that he acted on Interior's representations and it was unfair for Interior to withdraw its commitment to reimburse him for these expenses. Claimant requests that the Board find that Interior must reimburse his relocation expenses and extend the period for him to complete the lease-purchase transaction to three years.

The Federal Travel Regulation governs the reimbursement of travel expenses for government workers. This regulation provides that expenses incurred in connection with residence transactions are not allowed to be paid for new appointees. 41 CFR 302-11.4(a), -11.402(a) (2011); *see* 5 U.S.C. § 5723 (2006). Thus, Interior may not reimburse claimant for his residence transaction expenses.

We recognize that claimant was initially given erroneous advice by Interior employees. We have addressed this type of situation in numerous other decisions. In *Flordeliza Velasco-Walden*, CBCA 740-RELO, 07-2 BCA ¶ 33,634, at 166,580-81, we stated,

The Government is not bound by the erroneous advice of its officials even when the employee has relied on this advice to his detriment. *E.g.*, *John J. Cody*, GSBCA 13701-RELO, 97-1 BCA ¶ 28,694 (1996). Erroneous travel orders, reflecting mistaken assumptions on the part of authorizing officials, cannot obligate the Government to expend monies contrary to regulation. *Charles M. Ferguson*, GSBCA 14568-TRAV, 99-1 BCA ¶ 30,299; *James E. Black*, GSBCA 14548-RELO, 98-2 BCA ¶ 29,876; *William Archilla*, GSBCA 13878-RELO, 97-1 BCA ¶ 28,799.

Lee A. Gardner, GSBCA 15404-RELO, 01-2 BCA ¶ 31,456, at 155,325-26. More recently, this Board has said:

Only expenses authorized by statute or regulation may be reimbursed, because allowing an agency to make a payment in the absence of such authority would violate the Appropriations Clause of the Constitution. The Supreme Court consequently

has made clear that an executive branch employee's promise that the Government will make an "extrastatutory" payment is not binding. *Office of Personnel Management v. Richmond*, 496 U.S. 414 (1990); *Federal Crop Insurance Corp. v. Merrill*, 332 U.S. 380 (1947); see *Bruce Hidaka-Gordon*, GSBCA 16811-RELO, 06-1 BCA ¶ 33,255; *Teresa M. Erickson*, GSBCA 15210-RELO, 00-1 BCA ¶ 30,900.

Bradley P. Bugger, CBCA 555-TRAV, 07-1 BCA ¶ 33,579, at 166,342.

While we do not condone the actions of government employees in furnishing erroneous advice, such an error cannot commit the Government to pay for expenses that are prohibited to be paid pursuant to the law. The Government is not bound by such unauthorized actions. Claimant is a new appointee and is not entitled to the reimbursement of any expenses he incurs in connection with residence transactions.¹

Decision

The claim is denied.

JAMES L. STERN
Board Judge

¹ In any event, we note that claimant did not complete his sales transaction within the initial period that Interior (erroneously) authorized for claimant. Any extension of that period would be at the discretion of Interior, and would not be disturbed by the Board unless it was arbitrary or capricious. See *David Harbour*, CBCA 3462-RELO, 14-1 BCA ¶ 35,493. Further, the regulations in effect at the time of claimant's move required residential sales transactions to be completed within one year (extendable to two) from the first day of duty. 41 CFR 302-11.21, -11.420.