



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

January 29, 2015

CBCA 4373-RELO

In the Matter of JOHN D. McGUIRE

John D. McGuire, Albany, OR, Claimant.

Gilbert E. Teal, II, Associate General Counsel, and William J. Bailey, Jr., Associate General Counsel, Defense Contract Management Agency, Fort Lee, VA, appearing for Defense Contract Management Agency.

WALTERS, Board Judge.

Claimant, John D. McGuire, a civilian employee of the Defense Contract Management Agency (DCMA), made a permanent change of station (PCS) move within the agency from Amarillo, Texas, to Albany, Oregon, in 2013. Although his PCS orders authorized reimbursement of real estate transaction expenses in connection with the move, the DCMA disallowed his claim for expenses incurred in connection with the sale of his home in Las Vegas, Nevada. Claimant challenges that disallowance and, for the reasons discussed below, we sustain the disallowance and deny the claim.

Discussion

Pursuant to the provisions of the governing regulations, although real estate transaction expenses incurred in connection with a PCS move within the continental United States generally are reimbursable, an employee may only be reimbursed for the sale of a residence where it can be demonstrated that the residence in question was the one from which the employee regularly commuted to and from work at his previous duty station. More particularly, the Federal Travel Regulation in effect at the time of claimant's move provided the following with respect to this issue:

You may receive reimbursement for the one residence from which you regularly commute to and from work on a daily basis and which was your residence at the time you were officially notified by competent authority to transfer to a new official station.

41 CFR 302-11.100 (2013). Similarly, the Joint Travel Regulations (JTR), which were applicable to claimant as a civilian employee of the Department of Defense, limited reimbursement for home sale expenses to the residence from which the employee had been regularly commuting to work:

The residence . . . is the one from which the employee regularly commutes to and from work on a daily basis (weekend travel does not qualify).

JTR C5750-B.4.

In this case, it is undisputed that claimant did not regularly commute to his prior duty station in Amarillo, Texas, from his home in Las Vegas, Nevada, some 900 miles away. There is no authority, therefore, to reimburse claimant for the expenses he incurred in selling the Las Vegas home when he transferred to his new duty station in Oregon. *Linda Cashman*, CBCA 3495-RELO, 14-1 BCA ¶ 35,535; *Connie J. Holliday*, CBCA 1866-RELO, 10-1 BCA ¶ 34,439; *Myles England*, CBCA 1244-RELO, 09-1 BCA ¶ 34,045 (2008); *Allan E. McLaughlin*, CBCA 691-RELO, 07-2 BCA ¶ 33,666. And, although complainant may well have been assured incorrectly that reimbursement for such costs would be forthcoming, and may have relied on that advice to his detriment, “incorrect advice provided by government officials cannot create or enlarge entitlements that are not authorized by statute or regulation.” *Cashman*; see *Holliday* (citing *Emily G. Gibson*, CBCA 1160-RELO, 08-2 BCA ¶ 33,946; *Joseph E. Copple*, GSBCA 16849-RELO, 06-2 BCA ¶ 33,332). The Board must focus solely on what is permitted under the statute and regulations pertaining to federal employee travel and relocation and has no authority to provide relief otherwise or, as claimant has suggested, to direct the agency to “seek out an alternative means to compensate” him for the expenses in question. It is up to the agency (which has expressed sympathy for claimant’s plight) to determine whether any alternative means of affording claimant relief is available.

Decision

The claim is denied.

RICHARD C. WALTERS
Board Judge