



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

March 25, 2016

CBCA 4888-RELO

In the Matter of CHARLES S. STACHOWIAK

Charles S. Stachowiak, Mountain Home Air Force Base, ID, Claimant.

Capt. Travis P. Brinton, Office of the Staff Judge Advocate, Department of the Air Force, Joint Base Langley-Eustis, VA, appearing for Department of the Air Force.

POLLACK, Board Judge.

Claimant, Charles S. Stachowiak, a civilian employee of the United States Air Force, was transferred from Langley Air Force Base, Virginia, to Japan, and thereafter, from Japan to Mountain Home Air Force Base, Idaho. The Air Force (AF) denied Mr. Stachowiak's claim for reimbursement of real estate expenses incurred in connection with the sale of his residence at his original permanent duty station in Virginia on the ground that his claim was untimely. Claimant settled on the sale of his residence in Virginia in August 2006, soon after he was transferred to Japan, and then, once he was transferred back to the continental United States (CONUS), in May 2014, he submitted his claim for reimbursement of the settlement costs. The AF based its denial on the premise that any reimbursement to claimant for the real estate costs had to have been submitted within one year of his transfer to Japan. We find that the claim must be denied. Our decision is not based on the arguments provided by the AF, however, but rather on a controlling statutory provision neither cited or relied upon by the AF.

Background

On June 1, 2006, claimant received permanent change of station (PCS) orders to relocate outside CONUS (OCONUS), from his permanent duty station at Langley Air Force Base, Virginia, to Yokota Air Base, Japan. Claimant relocated to Japan on August 3, 2006. On August 18, 2006, while stationed at Yokota, Mr. Stachowiak closed on the sale of his primary residence located in Virginia and incurred \$28,335 in various settlement costs.

In June 2009, Mr. Stachowiak received new PCS orders transferring him from Yokota to Kadena Air Base in Okinawa, Japan. Claimant reported to his new duty station at Kadena on June 26, 2009, and remained there until 2014. On May 8, 2014, Mr. Stachowiak was again transferred—this time, back to CONUS to Mountain Home Air Force Base, Idaho. On July 14, 2014, Mr. Stachowiak reported to his new duty station, where he remains presently assigned.

On April 24, 2015, claimant submitted to the AF a request for reimbursement of the \$28,335 he incurred in connection with the August 2006 sale of his residence in Virginia. In a May 11, 2015, decision, the agency denied Mr. Stachowiak's claim in its entirety. The agency cited Joint Travel Regulations (JTR) 5908-C.3, which it says mandates a one-year window during which a transferred employee is eligible to use a real estate reimbursement entitlement. The agency set the effective date of transfer as the date on which claimant reported to Japan, and set the last day for reimbursement as the first anniversary of that transfer.

Discussion

The controlling statute, 5 U.S.C. §§ 5724a(d)(1)-(3) (2012), provides for relocation reimbursement in the case of transfer for the benefit of the Government. Subsection (d)(1) addresses transfers within the United States and (d)(2) specifically addresses transfer from a post outside the United States to one within the United States. Regarding the latter, the statute provides that an employee completing a tour at a foreign station, who is transferring to a station in the United States, other than his or her initial station of departure, is authorized reimbursement of expenses associated with the sale of his or her property. The statute, however, places a restriction on the reimbursement, requiring that reimbursement of these expenses is not permissible, if the returning transfer is to the same station or post from which the employee had been transferred overseas.

Additionally, subsection (d)(3) carries a further restriction as to reimbursement associated with return from an overseas posting. The subsection provides the following, as to property covered in (d)(2):

(3) Reimbursement of expenses under paragraph (2) of this subsection shall not be allowed for any sale (or settlement of an unexpired lease) or purchase transaction that occurs prior to official notification that the employee's return to the United States would be to an official station other than the official station from which the employee was transferred when assigned to the post of duty outside the United States.

The above limitation, requiring that reimbursement shall not be allowed for a sale that occurs prior to official notification of the employee's return to a different station from which he departed, is clear and unequivocal. In this instance, Mr. Stachowiak sold and settled on his house in Virginia in 2006, near the time he transferred overseas. He did not receive notification as to his return until 2014. The restriction clearly applies.

This Board has earlier addressed the requirement for notification in our decision in *Carol Lucius*, CBCA 1994-RELO, 10-2 BCA ¶ 34,536. In that case, citing to the Joint Travel Regulations (JTR), we found that the claimant was not entitled to real estate expenses when she had sold her home prior to receiving notification of her transfer to a station other than the one she had occupied prior to her overseas assignment. The JTR provisions cited in that decision essentially mirror the wording in the controlling statute, 5 U.S.C. § 5724a(d)(1)-(3). Earlier, our predecessor board, the General Services Board of Contract Appeals (GSBCA), had addressed this same restriction in *John W. Gray*, GSBCA 15484-RELO, 00-1 BCA ¶ 30,811. There, the Board said that even in cases where travel orders authorized reimbursement of real estate expenses, the agency may not reimburse those expenses where the sale occurred prior to the employee being officially notified that his transfer was to a site in the United States different from the one from which he was transferred when assigned to his foreign post.

Decision

For the reasons above, Mr. Stachowiak is not entitled to reimbursement of his real estate expenses. The claim is denied.

HOWARD A. POLLACK
Board Judge