



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

March 28, 2016

CBCA 5101-RELO

In the Matter of JARED J. GARTH

Jared J. Garth, McLean, VA, Claimant.

Brian F. Binney, Office of the General Counsel, Federal Bureau of Investigation, Department of Justice, Washington, DC, appearing for the Department of Justice.

SHERIDAN, Board Judge.

Claimant, Jared J. Garth, requests that the Federal Bureau of Investigation (FBI) be directed to pay him \$41,350 for the real estate expenses he incurred in the sale of his house in Portland, Oregon, on July 30, 2015 (hereinafter the "Portland house"). The agency denied this claim for reimbursement because claimant did not occupy and commute from the Portland house at the time of notification of transfer, as required by the Federal Travel Regulation (FTR). The agency correctly denied reimbursement of real estate expenses associated with the sale of the Portland house because claimant did not occupy or commute from the Portland house on a daily basis at the time of official notification of the transfer.

Background

Beginning in about 2005, claimant's permanent duty station was the FBI's Portland, Oregon Field Office. In May of 2013, claimant was selected for an eighteen-month temporary duty assignment (TDY) at FBI Headquarters (FBIHQ) in Washington, D.C., under the FBI's Headquarters Staffing Initiative (HSI). The HSI allows special agents to serve at FBIHQ for a TDY period of eighteen months with the option to extend for an additional six months.

Claimant began his TDY assignment on June 3, 2013. In September 2013, claimant rented the Portland house to a tenant for a term of one year. During the early summer of 2014, claimant asked the special agent-in-charge (SAC) of the Portland Field Office whether he would support an extension to his TDY and the SAC indicated he would. On August 25, 2014, claimant again leased the Portland house for a one-year term, ending August 31, 2015.

Claimant applied for various other assignments at FBIHQ that would have extended his TDY period. Claimant also applied for permanent positions at FBIHQ. However, he was not selected for any of the assignments, and, at that time, was unable to obtain a position in Washington, D.C.

Claimant's TDY assignment terminated and he returned to his PDS in Portland on about January 5, 2015. Because his Portland house was leased, claimant resided with a friend and commuted daily from the friend's house to his duty station in downtown Portland.

On about March 9, 2015, claimant was officially notified that he had been selected for a permanent position in Washington D.C. He advised the FBIHQ Human Resources Division (HRD) on March 11, 2015, that he was not then residing in his Portland house because it was rented to tenants and the lease would not expire until August 31, 2015. Shortly thereafter, claimant was notified by HRD that he was not eligible for home sale benefits because he was not residing in the Portland house.

On May 10, 2015, the tenants vacated the Portland house and claimant began commuting from it to his Portland office. Claimant reported to his new PDS in Washington, D.C., on June 15, 2015.

Claimant sold the Portland house on July 30, 2015, and claims he incurred reimbursable real estate expenses in the amount of \$41,350, which included the real estate broker's fee of 5% (\$40,000) and seller's title insurance (\$1350). On or about September 12, 2015, claimant submitted a voucher seeking \$41,350 to the FBI Finance Division. The FBI paid the voucher on November 3, 2015, and included a breakdown as follows:

Taxable amount:	\$41,350.00
Federal income tax withholding allowance:	\$13,783.33
Total federal, state, other taxes deducted:	<u>[-]\$21,301.46</u>
Net amount paid:	\$33,831.87

Claimant was contacted by the FBI's Finance Division via email message on November 30, 2015, informing him that the voucher payment was made in error because he

had not satisfied the condition of FTR 302-11.5, 41 CFR 302-11.5 (2014), which requires that in order to be reimbursed for real estate transactional expenses the primary residence must be occupied by the employee at the time he or she is notified of a permanent transfer. The FBI billed claimant to recover the \$33,831.87 it had erroneously paid.

Discussion

By statute, if an agency transfers an employee from one duty station to another in the interest of the Government, the agency must authorize the reimbursement of expenses that the transferred employee incurs in selling his residence at his old official duty station and in purchasing a residence at the new official duty station:

Under regulations prescribed under section 5738, an agency shall pay to or on behalf of an employee who transfers in the interest of the Government, expenses of the sale of the residence . . . 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 the new official stations are located in the United States.

5 U.S.C. § 5712a(d)(1) (2012); *see* 41 CFR 302-11.1 (“[t]he purpose of an allowance for expenses incurred in connection with residence transaction is to reimburse you when you transfer from an old official station to a new official station for expenses that you incur due to . . . [t]he sale of one residence at your old official station, and/or the purchase of a residence at your new official station”).

In implementing the statutory provision, the FTR identifies four basic conditions that an employee must meet to obtain reimbursement for expenses associated with either the sale of a residence at an old official station or the purchase of a residence at a new official station:

You must meet four basic conditions to be eligible to receive an allowance for expenses incurred in connection with your residence transactions:

- (1) You must be transferring from one official station to another;
- (2) Your relocation must be incidental to the transfer (i.e., not for the convenience of the employee);
- (3) Your relocation must meet the distance test conditions of § 302-2.6; and
- (4) Your new official station must be within the United States.

41 CFR 302-11.2(a).

The FTR contains other requirements for reimbursement of residence transaction expenses. Important to this matter, the FTR provides:

To be reimbursed for expenses incurred in my residence transactions, must I occupy the residence at the time I am notified of my transfer?

Yes, to be reimbursed for expenses incurred in your residence transactions, you must occupy the residence at the time you are notified of your transfer, unless your 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, as specified in § 302-11.2(b).

41 CFR 302-11.5. Further, the FTR states: “[y]ou 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.

The CBCA has adhered to these FTR requirements, which have the force of law, finding that there is no authority to reimburse an employee for sale of a residence where the employee does not commute from the residence at the time he or she was officially notified to transfer to a new official station. *See John D. McGuire*, CBCA 4373-RELO, 15-1 BCA ¶ 35,869; *Robert J. Cooke*, CBCA 4082-RELO, 14-1 BCA ¶ 25,793; *Keith Johnson*, CBCA 3793-RELO, 14-1 BCA ¶ 35,708; *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).

Claimant cites *Richard S. Citron*, GSBCA 15166-RELO, 00-1 BCA ¶ 30,788, and argues that an “employee on extended TDY [should] not be penalized as long as, upon receiving notice of transfer, he or she had a residence from which the employee could and would have feasibly commuted on a regular bases to the current [PDS].” While in *Citron* the General Services Board of Contract Appeals (GSBCA), our predecessor board for deciding travel and relocation cases, discussed a potential exception to the rule in “the unusual situation in which notification of transfer occurs while the employees is on long-term [TDY]” and recognized that the “‘regular commute’ test loses meaning,” it ultimately found that when the written notice was issued the claimant was clearly commuting on a daily basis from his home to his duty station and, therefore, was eligible for reimbursement for house sales expenses. *Id.* at 152,032. The potential exception discussed in *Citron* is not applicable to the facts of this case because claimant was not on long-term TDY when he received the notice of transfer.

Claimant provides various other argument as to why he rented his Portland house for the second year, and why he should be reimbursed his real estate expenses on its sale. We have considered these arguments and do not find them compelling.

The agency correctly denied reimbursement of real estate expenses associated with the sale of the Portland house. The March 9, 2015, selection notification served as the official notification of transfer. Upon receipt of the notification, claimant neither occupied nor commuted from the Portland house.

Decision

The claim is denied.

PATRICIA J. SHERIDAN
Board Judge