



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

March 31, 2016

CBCA 5003-RELO

In the Matter of TIMOTHY A. McCOY

Timothy A. McCoy, Raeford, NC, Claimant.

JoAnn W. Jones, Claims Officer, Tobyhanna Army Depot, Department of the Army, Tobyhanna, PA, appearing for Department of the Army.

SOMERS, Board Judge.

Claimant, Timothy A. McCoy, an employee of the Department of the Army, transferred pursuant to permanent change of station (PCS) orders from Camp Lejeune, North Carolina, to Fort Bragg, North Carolina. Mr. McCoy submitted a claim for reimbursement of real estate expenses in the amount of \$14,634. The agency denied the claim, stating that Mr. McCoy had incurred these expenses before he received his PCS orders.

Background

In January 2009, Mr. McCoy transferred from a position at Fort Bragg to Camp Lejeune, initially for a period of time not to exceed two years, until January 1, 2011. The agency extended Mr. McCoy's assignment several times.

As some point, Mr. McCoy received a Standard Form (SF) 50, Notification of Personnel Action, approved on June 2, 2014, which contained a statement which alerted Mr.

McCoy to the possibility that his assignment at Camp Lejeune would be coming to an end.¹ The remarks section of the SF-50 provided:

This action is necessary to provide continuity of operations within the activity. Reassignment may be ended at any time. At the end of the temporary reassignment, you will be returned to your former position or to a different position of equivalent grade and pay without following the Code of Federal Regulation procedures governing Reduction in Force, Performance Based Actions, Adverse Actions or Grievances.

Mr. McCoy states that after seeing this statement for the first time on his SF-50, he contacted his program manager at Camp Lejeune. His manager stated:

I hate to say this but I will have no more funding once it is gone in June or July. I hate to see you move on but understand. If for some odd reason that Light Armored Vehicles (LAV) wants to fund you I think that is the only way they can keep you around.

Mr. McCoy then contacted his former supervisor at Fort Bragg, who indicated that “he knew about it, and could not wait to get me back.”

In reliance on these statements, Mr. McCoy placed his house on the market in November and sold it on December 17, 2014. When Mr. McCoy sold his house, he did not have any PCS orders. The Army did not issue official PCS orders to Mr. McCoy until June 11, 2015, more than seven months after he placed his house on the market. These orders required Mr. McCoy to report to Fort Bragg on July 26, 2015, although amendments later changed his reporting date to August 9, 2015.

¹ While Mr. McCoy refers to an SF-50 in his appeal that is dated December 15, 2013, it was not provided for the record. In addition, the record did not contain other documents that Mr. McCoy refers to in his appeal. By order dated December 9, 2015, we asked Mr. McCoy to supplement the record with several documents. Specifically, we asked for (1) the real estate claim at issue, (2) all SF-50s referred to in his claim, (3) travel order MCC6867PJ50005, and (4) all documents originally submitted to the agency to support his claim. In response to our request, Mr. McCoy submitted two copies of his HUD-1 settlement statement, his PCS orders and amendment, the agency’s denial letter (which had already been submitted), an SF-50 approved on June 2, 2014, and an email message exchange between Mr. McCoy and an agency representative.

Mr. McCoy submitted a claim for reimbursement of real estate expenses of \$14,634. The agency denied Mr. McCoy's claim because he incurred these expenses prior to receiving his PCS orders. Mr. McCoy appeals the agency's denial of his claim.

Discussion

Employees who are transferred by an agency in the interest of the Government from one permanent duty station to another are entitled by statute, subject to regulations issued by the Administrator of General Services, to reimbursement from the agency for real estate expenses associated with the selling of the employee's residence at the old duty station. 5 U.S.C. §§ 5724a(d), 5738(a)(1) (2012); *Milton Brown*, CBCA 4998-RELO, 16-1 BCA ¶ 36,205 (2015).

In implementing the statutory provision, the Federal Travel Regulation (FTR) explains, in its question and answer format, that "reimbursement of any residence transaction expenses (or settlement of an unexpired lease) that occurs prior to being officially notified (generally in the form [of] a change of station travel authorization) is prohibited." 41 CFR 302-11.305; *see* Joint Travel Regulations (JTR) 2200-D.3. When a contract for purchase or sale is entered into prior to the agency's manifestation of an intent to transfer the employee, "the transaction will be considered to have been entered into for some reason other than the transfer. That reason may have been in anticipation of a transfer, but unless the transfer has been announced, anticipation is insufficient to make the sale incident to the transfer." *Jorge L. Gonzalez*, CBCA 984-RELO, 08-2 BCA ¶ 34,004, at 168,162 (quoting *Peter J. Grace*, GSBCA 16790-RELO, 06-1 BCA ¶ 33,219, at 164,635). "The rationale for this rule is that, if the transfer does not materialize, either the employee or the Government may 'lose money for no purpose.'" *Id.* (citing *Connie F. Green*, GSBCA 15301-RELO, 01-1 BCA ¶ 31,175, at 153,998 (2000)).

Exceptions to the general rule will permit reimbursement if the agency has manifested a clear "administrative intent" to transfer an employee when the costs are incurred. *See Jason A. Johnson*, CBCA 2608-RELO, 12-1 BCA ¶ 34,914, at 171,663 (citing *Gonzalez*, 08-2 BCA, at 168,162). Moreover, "travel orders are not the sole indication of an agency's intent, and reimbursement will be provided, so long as 'a definite selection for the position has been made and all parties concerned had good reason to expect the transfer would be approved and effectuated.'" *Id.* "Agencies have broad discretion in determining whether there was administrative intent to transfer an employee." *Brandon J. Thorpe*, CBCA 2103-RELO, 11-1 BCA ¶ 34,687, at 170,847 (citing *Green*). Whether an agency has manifested a "clear intention" to transfer an employee prior to issuance of formal notification of its intent depends on the facts and circumstances of the specific situation presented for decision. *Id.*

Mr. McCoy asserts that the statement contained in the remarks section of his SF-50, together with the statements from his program manager and supervisor, evidences a clear intent to reinstate Mr. McCoy in a position at Fort Bragg. Mr. McCoy points to the decision in *Johann Schlager*, CBCA 3294-RELO, 13 BCA ¶ 35,328, as support for his argument that the agency clearly intended to return him to a position at Fort Bragg.

In *Schlager*, the agency had issued a tentative written offer of employment to the claimant. The claimant completed preemployment security checks and forms related to his future employment. The claimant spoke to the individual in charge of the application process, and they discussed an unofficial start date. In reliance upon that conversation, the claimant paid a security deposit on an apartment and incurred moving expenses. During that same week, however, the agency notified the claimant that because the job advertisement would not close until a later date, his final offer of employment would be later than anticipated. Ultimately, claimant received an offer of employment, started his employment on the planned date, and submitted a travel voucher for the travel expenses that he incurred before his official start date. After the agency denied his claim, the claimant appealed to the Board. The Board held that the claimant was entitled to reimbursement because claimant had a written offer of employment, contingent on conditions which were ultimately fulfilled, and had telephone contact with agency officials in which a firm start date had been established.

Here, the evidence does not clearly point to the existence of an administrative intent to transfer this employee at the time he entered into the contract under which he became obligated to sell his residence. None of the evidence relied upon by Mr. McCoy can be construed as providing clear “administrative intent” that the agency planned to transfer him at the time he sold his house. The statement from his program manager at Camp Lejeune that funding for his position would end in June or July, unless funding was provided by another source, did not indicate that Mr. McCoy would be assigned to another position at any specific time and left open the possibility of future funding. The statement in the SF-50, that “reassignment may be ended at any time [and that] [a]t the end of the temporary reassignment, you will be returned to your former position or to a different position of equivalent grade and pay” is similarly vague – nothing precluded the agency from transferring Mr. McCoy to a “different position” at Camp Lejeune. “Expressions of intent must be particularized to specific employees, times, and places, in order to be effective.” *Gary J. Tennant*, CBCA 553-RELO, 07-1 BCA ¶ 33,558, at 166,224. Claimant failed to provide any evidence that could be construed to show clear administrative intent sufficient to overcome the general rule that relocation expenses incurred prior to being officially notified are prohibited.

Decision

Based upon the evidence before the Board, the agency correctly denied reimbursement of the claimed expenses.

JERI KAYLENE SOMERS
Board Judge