



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

November 4, 2016

CBCA 5389-RELO

In the Matter of JEREMY R. GREER

Jeremy R. Greer, North Bend, WA, Claimant.

Luke Rose, Headquarters, 66th Military Intelligence Brigade, Department of the Army, APO Area Europe, appearing for Department of the Army.

VERGILIO, Board Judge.

Employed by one agency, claimant transferred from the continental United States (CONUS) to a foreign, outside the continental United States (OCONUS) duty station. Thereafter, rather than relocate pursuant to a management-directed reassignment, claimant completed the assignment and sought and accepted a job with a different agency and transferred to a CONUS duty station. Claimant has not demonstrated entitlement to recover resident transaction expenses for the purchase of a residence at the new CONUS duty station; the move was not in the Government's interest.

As a civilian employee of the Department of the Army, the claimant, Jeremy R. Greer, resided in the continental United States and was transferred to a foreign OCONUS location. Reimbursement of resident transaction expenses was not authorized for that move. Thereafter, the claimant received notice of a management-directed reassignment to a CONUS location, effective July 1, 2015. The claimant opted to obtain a job at a different CONUS location with the Defense Contract Management Agency (DCMA). It is apparent from the submissions that the final CONUS duty station is more than fifty miles from the original CONUS location from which the claimant departed to the foreign duty station. The latest travel authorization, which set the reporting date at the new CONUS duty station in July 2015, does not authorize reimbursement of real estate expenses. At the new duty station, the claimant purchased a residence and seeks reimbursement from the Army.

The Army declined to pay the costs associated with the purchase of the residence at the new duty station on the basis that the transfer was not in the interest of the Army. The Army noted a command position not to authorize real estate expense payment for “voluntary” relocation—that is, for a relocation to other than a position directed by the Army, such as when an employee accepts a position with a different agency. The Army informed the claimant that he could ask DCMA to amend the authorization. The claimant has presented no authorization or determination from DCMA that the transfer was deemed to be in the interest of the Government.

The claimant bears the burden of proof. The applicable regulations are those in effect when the employee reports for duty at the new official station. 41 CFR 302-2.3 (2015) (Federal Travel Regulation (FTR) 302-2.3). The claimant relies upon a provision of the Joint Travel Regulations (JTR) applicable to a transfer from a foreign to a CONUS duty station:

An employee who has completed an agreed upon tour of duty at a foreign PDS [permanent duty station] and is reassigned/transferred to a different CONUS/non-foreign OCONUS PDS (other than the one from which transferred when assigned to the foreign PDS) is authorized reimbursement under this Part.

JTR 5908-D.2.a.

The above provision must be read in context. It discusses applicability with respect to an eligible employee whose relocation is deemed to be in the Government’s interest. JTR 5500-A.2 (chapter covers transfers “in the Gov’t’s interest from one PDS to another”), 5502-A.1 (regarding general eligibility: “allowances are payable when it is in the Gov’t’s interest to fill a position by moving an employee from one PDS to another”). The Army explained to the claimant, given that this transfer was not to a management-directed location, that a JTR provision specifies when a move is not in the Government’s interest:

(1) If an employee pursues, solicits or requests (not in response to a vacancy announcement) a position change resulting in a geographic move from one PDS to another, the transfer is for the employee’s convenience and benefit.

JTR 5502-B.2.b. The record provides no basis to conclude that this provision is inapplicable to the transfer to the CONUS location. In particular, a paragraph (2) to the cited JTR provision, which would be applicable if the claimant responded to a vacancy announcement, states:

- (2) The gaining activity must formally advise the employee, at the time an offer is extended, that the transfer is in the employee's interest, not in the Gov't interest, and that the Gov't does not pay the PCS expenses.

JTR 5502-B.2.b. The record does not show that the claimant accepted a position with DCMA under an announcement that provided for the reimbursement of resident transaction expenses, or that indicates that DCMA deemed the transfer to be in the Government's interest. The Army notified claimant of the potential to amend the authorization; no change was made regarding residential transaction expenses. The claimant transferred under orders that did not authorize the reimbursement of expenses for the purchase of a residence; this indicates that the transfer was deemed to not be in the Government's interest for recovery of the costs in question.

The claimant is not entitled to recover purchase expenses in connection with the initial move to the foreign OCONUS location, as such was not part of that authorization. With regard to the subsequent return to a CONUS location, the Army correctly applied provision (1) quoted above.

The determination by the Army that the transfer was in the claimant's interests is reasonable and upheld. The claimant does not recover requested costs incurred in purchasing a residence at the new duty station.

JOSEPH A. VERGILIO
Board Judge