



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

May 6, 2016

CBCA 5215-RELO

In the Matter of TYLER D. WARNER

Tyler D. Warner, Boise, ID, Claimant.

Sofia Luiña, Office of Chief Counsel, Drug Enforcement Administration, Department of Justice, Springfield, VA, appearing for Department of Justice.

WALTERS, Board Judge.

Claimant, Tyler D. Warner, a civilian employee of the Department of Justice, Drug Enforcement Administration (DEA), requests the Board's review of DEA's denial of his claim for reimbursement of \$13,545 of real estate expenses incurred for the sale of his residence, in connection with his permanent change of station (PCS) transfer from the DEA's Portland, Oregon, District Office to its Boise, Idaho, Resident Office in early 2015. For the reasons explained below, the claim is granted.

Background

On November 12, 2014, DEA's Office of Diversion Control announced vacancies in the Seattle Field Division, including its Boise Resident Office. The announcement indicated that "Permanent Change of Station funding" was authorized. Claimant applied for a position in the Boise Resident Office and, on January 23, 2015, received an email message from the DEA's Chief of Diversion Planning and Resources Section in Washington, D.C., notifying him that he had been selected for the position and asking him, by close of business, Tuesday, January 27, 2015, to advise as to whether he would accept the position. By email message of January 26, 2015, claimant accepted the offered position. On February 23, 2015, claimant received another email message from the DEA Seattle Field Division office, formally

confirming his selection to the Boise Resident Office. That email message also stated that his reporting date to his new post of duty would have to be within ninety days of the issuance of the transfer control number (TCN), referred to the agency's PCS handbook and to the employee's assigned transportation specialist for guidance regarding PCS entitlements, and cautioned that "no expenses may be incurred until receipt of official travel orders." Shortly thereafter, the Seattle Field Division Diversion Program Manager asked claimant to provide him with a reporting date and, by response email message of February 24, 2015, claimant advised: "I would like to tentatively set 06/01/2015 as my reporting date for Boise as my TCN is still pending." Thereafter, on March 12, 2015, claimant wrote to the Division's Chief of Diversion Value Analysis Unit, asking her when his TCN would be issued. She responded that the DEA Career Board "was working on it" and that "the cable should go out within the next couple of weeks."

Also on March 12, 2015, claimant entered into a residential real estate sale agreement for the sale of his Portland residence. On March 23, 2016, the Career Board issued TCN numbers for several employees being transferred, including claimant. And on March 27, 2015, claimant's PCS travel orders were issued.

Claimant closed on the sale of his Portland residence on April 22, 2015, moved to Boise, and reported to the Boise DEA office, with an effective date of May 31, 2015. He submitted a voucher for the real estate transaction costs related to the sale of his residence on May 6, 2015. The voucher ultimately was returned by DEA unsigned. The agency maintained that it was without authority to pay the claim and advised claimant of his appeal rights. This appeal was filed with the Board on March 3, 2016.

Discussion

By statute, the Government is to reimburse its employees for real estate transaction expenses they incur that are incident to a transfer of station that is in the Government's interest. 5 U.S.C. §§ 5724a(d)(1), 5738(a)(1) (2012). The Comptroller General has held that, even if the associated dollar amounts are expended subsequently, real estate transaction costs are incurred at the point in time a contract for purchase or sale is entered into. *Bernard J. Silbert*, B-202386 (Sept. 8, 1981). And, unless the agency has already manifested its intent to transfer the employee by that point in time, the costs that ultimately are expended will not be reimbursed, since they cannot be regarded as incident to the transfer. *Jorge L. Gonzalez*, CBCA 984-RELO, 08-2 BCA ¶ 34,004.

The general rule is that a transferred employee may not be reimbursed for expenses incurred in advance of his receipt of formal notification of the pending transfer. *Byron L. Wells*, CBCA 1206-RELO, 08-2 BCA ¶ 33,979, at 168,064 (citing *Connie F. Green*, GSBCA

15301-RELO, 01-1 BCA ¶ 31,175 (2000)). Nevertheless, an exception to this general rule has been carved out and reimbursement has been allowed where, prior to the incurrence of the expense, the agency has manifested a clear “administrative intent” to transfer the employee. Travel orders are not the sole indication of the 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.” *Gonzalez*, 08-2 BCA at 168,162, and cases cited therein; *see also Kristina R. Dronenburg*, CBCA 3847-RELO, 15-1 BCA ¶ 35,872; *Byron L. Wells*, 08-2 BCA at 168,064-65. Even telephone contacts in which a definite offer is made, though contingent upon higher level approvals, may be sufficient to establish the requisite “administrative intent.” *See Brandon J. Thorpe*, CBCA 2103-RELO, 11-1 BCA ¶ 34,687, at 170,847, and cases cited therein.

Here, we find clear manifestation of the agency’s administrative intent to transfer claimant from Portland to Boise prior to claimant’s entering into the real estate sales contract in question and long before the issuance of either the TCN or the travel orders. In this case, we find that a “definite offer” was made to claimant of the Boise position, and there is no indication that the individuals who extended and subsequently confirmed that offer were not fully authorized to present it to claimant for his acceptance. Moreover, it is patently obvious that all concerned “had good reason to expect the transfer would be approved and effectuated” and proceeded on the basis of that expectation, which ultimately proved correct. As noted above, claimant was asked in advance of the issuance of the TCN and travel orders to furnish a projected reporting date.

The case precedent repeatedly recognizes that the absence of travel orders will not automatically negate the establishment of administrative intent to transfer. And although the aforementioned February 23, 2015, email message to claimant reminded him that “no expenses may be incurred until receipt of official travel orders,” it did not put him on notice that expense reimbursement would be legally prohibited, even if the agency otherwise manifested its clear administrative intent to effect Mr. Warner’s transfer. To the contrary, in *Jason A. Johnson*, CBCA 2608-RELO, 12-1 BCA ¶ 34,914, the Board pointedly observed that the “regulations do not preclude reimbursement for any such expense which was incurred prior to issuance of the PCS orders.” Rather, in that case, we found that the agency’s reference to issuance of travel orders (via the DD Form 1614) merely signified a “marker” that “would alleviate the agency’s need to perform further inquiry to determine whether its intent to transfer an individual employee could be established through other means.” *Id.* at 171,664. In the present case, as explained above, the agency’s intent to transfer was clearly manifested prior to claimant’s incurrence of the real estate expenses at

issue and months before formal travel orders were issued.¹ Under these circumstances, the agency erred in rejecting Mr. Warner's claim for reimbursement of monies expended in selling his Portland residence and in concluding that it had no legal authority to pay him for those expenses.

Decision

For the foregoing reasons, the claim is granted, to the extent that the elements of the amount claimed are reimbursable under provisions of the Federal Travel Regulation, 41 CFR pt. 302-11 (2014).

RICHARD C. WALTERS
Board Judge

¹ Nothing about the February 23, 2015, email intimated that reimbursement of expenses incurred in advance of TCN issuance would be legally impermissible, nothing in the regulations indicates that the absence of a TCN automatically precludes expense reimbursement, and the agency's insistence that the absence of a TCN would have that effect here is without basis. Claimant's inquiry about the timing for issuance of the TCN was in response to the agency's request to him for a projected reporting date and was completely understandable, in light of the agency's instruction in that February 23 email message that "[r]eporting dates to the new post of duty must be within 90 days from the date the Transfer Control Number (TCN) is issued."