



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

November 28, 2017

CBCA 5784-RELO

In the Matter of DAVID A. LEAKE

David A. Leake, San Diego, CA, Claimant.

C. Scott Vogeley, United States Forces, Japan and Fifth Air Force, Yokata Air Base Japan, appearing for Department of Defense.

VERGILIO, Board Judge.

The claimant was authorized to receive foreign transfer assistance (FTA) pre-departure after vacating his residence in preparation for a move. On the eighth day after vacating his residence, he was placed on administrative leave, pending the outcome of an internal investigation into potential misconduct by the claimant. The claimant was paid FTA for the eight days; he continued to incur expenses thereafter for which he seeks payment. The claimant received formal discipline and the job offer was withdrawn thereafter. Because the claimant did not transfer, he cannot show entitlement to FTA.

As a civilian employee in the Department of Defense, the claimant, David A. Leake, had a written authorization to change permanent duty stations from the continental United States (CONUS) to outside CONUS (OCONUS), with a reporting date of February 19, 2017, at the new duty station. The claimant was authorized to receive the subsistence expense portion of FTA for up to ten days before final departure to OCONUS after vacating his residence.

On February 9, 2017, the claimant vacated his residence and began claiming FTA. On February 17, the claimant learned that the relocation was put on hold while the Government investigated potential misconduct by the claimant; the claimant was placed on administrative leave pending the outcome of an internal investigation. The claimant

continued to incur expenses while the investigation continued. On May 4, 2017, the claimant received formal notification that the job offer was withdrawn due to information associated with the investigation. The claimant received formal discipline.

The claimant received payment of FTA for eight days (February 9-17, inclusive), while in the process of transferring. The claimant seeks payment for a total of fifty-nine days of lodging and eighty-five days of per diem, asserting that an individual with the Government approved such payment and that it was within the discretion of the Government to authorize FTA for days beyond the initial ten.

The claimant is unable to demonstrate entitlement to FTA or any extension thereof because he did not transfer or relocate. By statute, the transfer allowance is paid for costs “incurred by an employee incident to establishing himself at a post of assignment” in a foreign area. 5 U.S.C. § 5924(2) (2012). This claimant did not establish himself at a foreign post. Similarly, the implementing regulations, the Department of State Standardized Regulations (DSSR) 241.1, 242.3, make reference to establishing oneself at a post of assignment and departing a post, which this claimant did not do because he did not relocate. Having not transferred, the claimant cannot show entitlement to the FTA he seeks, and cannot show that the agency abused its discretion when it opted not to lengthen the FTA period in the actual authorization. *David G. Kulinski*, CBCA 5703-RELO, 17-1 BCA ¶ 36,824 (statute authorizes expenditure of funds for a transfer; not for employee who fails to transfer). Any assurances the claimant may have received, regarding payments for the period while his relocation was on hold, do not serve to alter or invalidate the basic requirements of the underlying statute and implementing regulations.

Because the claimant failed to transfer, he does not prevail on his claim.

JOSEPH A. VERGILIO
Board Judge