



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

August 4, 2021

CBCA 7125-RELO

In the Matter of BYRON B.

Byron B., Claimant.

Connie J. Rabel, Director, Travel Mission Area, Enterprise Solutions and Standards, Defense Finance and Accounting Service, Indianapolis, IN, appearing for Department of Defense.

GOODMAN, Board Judge.

Claimant, pursuant to Board Rule 407 (48 CFR 6104.407 (2020)), has filed a request for reconsideration of the Board's decision dated June 23, 2021. Knowledge of that decision is presumed. In his request for reconsideration, claimant disagrees with our previous decision and has reiterated information previously submitted. Board Rule 407 provides that "[m]ere disagreement with a decision or re-argument of points already made is not a sufficient ground for seeking reconsideration." Claimant also presents arguments not made previously. In general, the Board will not grant reconsideration based on arguments that were or should have been raised during the original proceeding. *See, e.g., Jerie Renee Holliday*, CBCA 3931-RELO, 15-1 BCA ¶ 35,911 (2014). We therefore deny his motion for reconsideration but offer the following to further explain our prior decision.

Claimant asserts in his motion for reconsideration that *Merritt L. Whitelaw IV*, CBCA 6596-RELO (Mar. 5, 2020), is not applicable because that decision was based only upon a review of the settlement sheet and not the contract of sale. The employee in that case did not submit the contract of sale into the record. Even so, claimant's contract of sale and the information submitted by claimant in this case support our decision.

The addendum of claimant's contract of sale states that "[s]eller agrees to credit buyer \$19,082 for the [company's] service charge at the closing date." The contract does not state

that the service charge was consideration for “all services to execute a real estate transaction,” as claimant asserts in his motion for reconsideration, or that it was to pay for any specific closing costs as claimant asserted in its initial submission to this Board.¹ Rather, the information submitted by claimant describes the purpose of the service charge as set forth in the business models of the company and similar companies that purchase homes directly from sellers. This information states that because these companies purchase property directly from buyers with the intent to resell the property, the service charge is to compensate the purchaser for costs incurred *after* the transaction is concluded and until the property is resold—the purchaser’s ongoing costs of ownership (property taxes, insurance, utilities, maintenance) and protection from possible risks (vandalism, break-in, drop in market price). If the purchaser’s actual costs prior to resale are less than the service charge, the purchaser realizes a profit, and if not, a loss. It is therefore clear that the service charge does not pay for execution of the real estate transaction or for any specific closing costs but compensates the purchaser for its operating and maintenance costs while it owns the property and until the property is resold.

While Congress has directed agencies to pay, to an employee who is transferred in the interest of the Government, expenses the employee incurs in selling a residence at an old duty station, the legislature has permitted the Administrator of General Services to define which expenses will be reimbursable. 5 U.S.C. § 5724a(d)(1) (2018). Reimbursement of operating and maintenance costs is specifically prohibited by both the Federal Travel Regulation (FTR) and the Joint Travel Regulations (JTR). *See* 41 CFR 302-11.202(f); JTR 054505-A.4 (Jan. 2020). The service charge is therefore not a reimbursable expense.

Claimant also states in his motion for reconsideration, “The CBCA review of my appeal did not address the failure of the government to abide by regulatory requirements, specifically, the U.S. Government’s denial of due process in the mechanism used for my relocation.” Claimant cites 41 CFR 302-2.103(e), which requires the agency to “[p]rovide counseling about relocation benefits to all relocating employees.” He states that the Government had previously denied such service charges at issue and had withheld this information from him. He states further:

¹ The sum of the itemized closing costs paid by the buyer was \$3568. In his original submission, claimant asserts that some of these items were paid from the service charge. However, in his motion for reconsideration, he states: “The appeal was not intended to claim individual expenses were separately incurred, but that the individual services required to execute a real estate transaction were incorporated into a single contractual service charge.”

This denial of due process denied [me] the opportunity to mitigate relocation costs and/or turn down the relocation. Had the government executed its legal obligation and provided notification of the intent to deny payment of reasonable and customary contractual real estate charges, I would have declined to relocate. In the event that the government continues to deny reimbursement for real estate expenses, [I] request compensation to cover all costs to be made whole and restored to [the prior duty station].

Pursuant to statute and a delegation of authority from the Administrator of General Services, this Board has the authority to “settle claims involving expenses incurred by Federal civilian employees for official travel and transportation, and for relocation expenses incident to transfers of official duty station.” 31 U.S.C. § 3702(a)(3). Beyond that, the Board, as a quasi-judicial tribunal, does not perform independent investigations with regard to cases presented to it. *Beth A. Wilson*, CBCA 600-RELO, 07-1 BCA ¶ 33,546; *Eric B. Fort*, GSBCA 16302-TRAV, 04-1 BCA ¶ 32,541 (2003). We cannot review claimant’s allegations of the agency’s alleged failure to communicate during the relocation process nor can we consider what actions claimant might have taken under circumstances that did not occur. We also do not have the authority to reverse an employee’s relocation decision and return an employee to the prior duty station.

Claimant also repeats his position with regard to his request for compensation of costs of pet quarantine documentation and states his disagreement with our decision to deny reimbursement. We offer no further explanation on this issue.

The request for reconsideration is denied.

Allan H. Goodman
ALLAN H. GOODMAN
Board Judge