



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

July 18, 2022

CBCA 7355-RELO

In the Matter of ROBERT D.

Robert D., Claimant.

Darlene Cleary, Supervisory Financial Analyst, Travel Operations Office, United States Forest Service, Department of Agriculture, Albuquerque, NM, appearing for Department of Agriculture.

LESTER, Board Judge.

Claimant asks that we require his employer, the United States Forest Service (USFS), to reimburse transaction expenses that he incurred in connection with the sale of a residence at his former permanent duty station (PDS). Because claimant did not occupy that residence when the USFS notified him of his selection for a position at the new PDS, we deny claimant's request.

Background

Claimant was working for the USFS at a PDS in Colorado when, on March 24, 2020, he was notified that the USFS had approved his "Transfer of Station" (TOS) to Ratcliff, Texas, with a report date at his new PDS of May 11, 2020. When notified of this approval, claimant was residing with his wife and dependents at the home that he and his wife owned in Lewis, Colorado (residence A).

On March 30, 2020, claimant submitted a travel authorization request form (FS-6500-0140) for himself, his wife, and their three dependents. The form instructions required him to "[e]nter the complete physical address of the residence from which you currently commute to and from work on a daily basis" as his "Residence Address," and, in response, claimant

identified residence A. On March 31, 2020, the USFS issued claimant's official travel authorization, approving, among other reimbursements, residence transaction expenses associated with the sale of claimant's residence at the old PDS.

Very soon thereafter, claimant and his wife decided to divorce, and he moved for a period of time into an apartment that he owned in Cortez, Colorado (residence B), before starting his new position in Texas in May 2020.¹

Under the Federal Travel Regulation (FTR), a transferring employee has one year after the date upon which he reports for duty at a new PDS to sell his residence at the old PDS but can apply for a one-year extension of that deadline. 41 CFR 302-11.21, -11.22 (2021) (FTR 302-11.21, -11.22). On April 21, 2021, claimant notified the USFS that "it looks like the sale of my home in Colorado is going through" but that he would need a three-week extension (beyond May 11, 2021) to complete the sale. Claimant's request did not reference the address of the residence being sold. The USFS granted the extension request on April 23, 2021, and claimant closed on the sale of residence B on May 14, 2021.

On October 28, 2021, claimant sent his home sale reimbursement request to the USFS, seeking reimbursement of \$8400 in real estate transaction costs. During its review of the documentation, the agency noticed that the address of the property sold was residence B, not residence A (the residence listed on the TOS approval and the travel authorization). The USFS represents that, until this time, it was never notified of claimant's change of residences in Colorado, but claimant asserts that he had spoken to his move officer before selling residence B and was told that, because residence B was of lesser value (with lower transaction expenses) than residence A, he would not have a problem being reimbursed for the residence B sale.

On November 17, 2021, citing to FTR 302-11.5, the agency denied claimant's reimbursement request, asserting that only expenses associated with the sale of residence A, the residence that he occupied when he was notified that the USFS had approved his transfer, could be reimbursed.

¹ It is not clear from the record exactly when claimant moved into residence B, and, although the record indicates that claimant was to report for duty at his new PDS in Texas on May 11, 2020, it is unclear whether, because of COVID protocols or for other reasons, he was allowed to work remotely and remain in the Cortez residence for some period of time after May 11, 2020. We need not know the specific arrival and departure dates to resolve the issue before us. The only relevant fact is that claimant was residing at residence A in March 2020 when he received his TOS approval notice and his official travel authorization.

On March 24, 2022, claimant submitted this claim challenging the USFS's denial.

Discussion

“The purpose of an allowance for expenses incurred in connection with residence transaction[s] is to reimburse [an employee who] transfers from an old official station to a new official station for expenses that [he or she] incur[s] due to . . . [t]he sale of one residence at [the employee's] old official station.” FTR 302-11.1(a); *see id.* 302-11.6 (“If you qualify for a residence transaction expense allowance, you may be reimbursed for the . . . [e]xpenses of selling your old residence.”). In defining the term “residence,” the FTR provides that, for a transfer from one domestic PDS to another, the residence for which the agency can reimburse transaction expenses is the one that the employee occupied when he or she was notified of the transfer:

To be reimbursed for expenses incurred in my residence transactions, must I occupy the residence at the time I am notified of my transfer?

Yes, to be reimbursed for expenses incurred in your residence transactions, you must occupy the residence at the time you are notified of your transfer, unless your transfer is from a foreign area

FTR 302-11.5; *see id.* 302-11.100 (A transferring employee “may receive reimbursement for the one residence from which [the employee] regularly commute[s] to and from work on a daily basis and which was [the employee's] residence at the time [the employee was] officially notified by competent authority to transfer to a new official station.”). There is no authority allowing for reimbursement of expenses associated with the sale of a property in which the employee did not reside when he or she was notified of his or her transfer to a new PDS. *Jared J. Garth*, CBCA 5101-RELO, 16-1 BCA ¶ 36,323, at 177,086.

Notification of a transfer occurs when the agency informs the claimant that he or she has been selected for a position in a different location than his or her present PDS and that relocation expenses are authorized. *See Juan D. Torralba*, CBCA 1524-RELO, 09-2 BCA ¶ 34,188, at 168,984 (“A selection notification message from the agency to the claimant informing that the agency has selected the claimant for a specified position, at a given location different from the present duty station, with the note that relocation expenses are authorized, serves as notification of the transfer.”).

Here, claimant was notified of the approval of his TOS request on March 24, 2020. The notification informed claimant that he was “eligible for reimbursement for [TOS] expenses” if he met “the conditions set forth in the Federal, [Department of Agriculture], and Forest Service Travel Regulations.” At the time of this notification, claimant was residing

at residence A. In fact, claimant was still living in residence A when he completed his travel authorization request on March 30, 2020, and received his official travel authorization on March 31, 2020. At some subsequent point, claimant moved to, began occupying, and eventually sold residence B. Claimant did not occupy the residence for which he now seeks transfer expense reimbursement when he was notified by the agency of his selection. The only residence transaction expenses for which claimant was entitled to reimbursement were for residence A, which is not the property that claimant sold. The FTR precludes reimbursement of expenses incurred in selling residence B.

Claimant asserts that his move agent assured him that approval of transfer expense reimbursement for residence B would not be a problem because residence B was worth less than residence A and that he relied on that assurance in deciding to sell residence B. Unfortunately, “an agency employee’s erroneous advice cannot obligate the Government to make payment of monies that are not authorized by statute and regulation.” *Monika M. Derrien*, CBCA 5901-TRAV, 18-1 BCA ¶ 36,967, at 180,100. Thus, while it is unfortunate that claimant may have received incorrect guidance, the agency may not pay his real estate transaction expenses because to do so would directly violate FTR 302-11.5.

Decision

For the foregoing reasons, the agency’s determination that it could not pay claimant’s expenses associated with the sale of residence B is correct. The claim is denied.

Harold D. Lester, Jr.
HAROLD D. LESTER, JR.
Board Judge