



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

October 24, 2022

CBCA 7436-RELO

In the Matter of SASSKAYO P.

Sasskayo P., Claimant.

Sarah G. Fishel and James E. Hicks, Office of Chief Counsel, Drug Enforcement Administration, Department of Justice, Springfield, VA, appearing for Department of Justice.

VERGILIO, Board Judge.

The relocating claimant entered into a binding contract and became obligated to purchase a residence at the new duty station prior to the relocation becoming official. Because the claimant acted too early, the associated costs of the purchase are not reimbursable.

In November 2021, the claimant received an announcement indicating an anticipated relocation (a change of permanent duty stations) from outside the continental United States (OCONUS) to within CONUS. The announcement specifies that a transfer control number (TCN) is pending, that such would be issued based upon the availability of funds and after all necessary clearances are obtained, and that a reporting date had yet to be established. Regarding the permanent change of station (PCS), the announcement directs that no PCS expenses may be incurred prior to issuance of a TCN and funded PCS orders. The directions are consistent with applicable Federal Travel Regulations. 41 CFR 302-11.305 (2021) (“[R]eimbursement of any residence transaction expenses . . . that occurs [sic] prior to being officially notified (generally in the form [of] a change of station travel authorization) is prohibited.”).

In March 2022, the claimant entered into a ratified contract to purchase a residence, creating obligations to pay money and to take further action. In April 2022, the claimant received (a) notification of the transfer, (b) a TCN, and (c) a reminder to incur no expenses until receipt of official travel orders. The claimant received official authorization with

receipt of official travel orders in May 2022. The agency has denied reimbursement of expenses incurred with respect to the purchase, maintaining that the claimant incurred expenses prior to official notification.

The claimant suggests that the settlement/closing date, which post-dated the official authorization and other pre-requisites to payment, should be utilized as the date expenses were incurred to enable recovery here. The notion that settlement creates the incurrence of expenses is contrary to the ratified contract for purchase which established the obligation. As stated in *Joseph Bush*, CBCA 660-RELO, 07-1 BCA ¶ 33,560, a binding contract for purchase equates to the incurrence of expenses related to purchase. The contract this claimant signed obligated the claimant to make payments and reflects the incurring of expenses. The claimant acted prior to the official notification of the transfer and the receipt of a TCN and official travel orders.

To prevail, the record must demonstrate that prior to incurring the expenses, there was an existing administrative intention to transfer the claimant that was clearly evident at the time the claimant incurred the expenses. The claimant contends that administrative intent existed in November and was reinforced thereafter, when the claimant received the notice of intent to transfer and engaged in establishing a starting date. The agency maintains that the administrative intent to transfer the claimant to the location arose after expenses were incurred. It asserts that emails anticipating the transfer and sorting out a start date did not reflect a determination by the agency to transfer the claimant to the given location at a given time. Higher levels of authority controlled the determinations of where and when a transfer would occur, if at all, such that the levels of individuals involved in the communications prior to official action are insufficient to constitute official intent. The agency references budgetary and staffing level concerns that were part of the analysis that those with the authority to make the transfer official had to consider. The agency contends that the place and date of the transfer, if it would occur, still had to be settled at the time the claimant incurred these expenses. Consistent with this position, the November announcement specified that the transfer was pending and dependent on funding and other determinations. The added alert, that the claimant was to incur no PCS expenses prior to the issuance of a TCN and funded orders, makes clear that in November no administrative intent existed upon which the claimant could rely.

In addition to the above, the agency distinguishes the facts of this case from other Board cases, including *Tyler D. Warner*, CBCA 5215-RELO, 16-1 BCA ¶ 36,364, and *Jason A. Johnson*, CBCA 2608-RELO, 12-1 BCA ¶ 34,914. In the first case, the employee sought a transfer, applied for a job, and accepted an offer. In the second case, the claimant accepted a transfer to a given location. Each claimant incurred expenses after acceptance of relocation but prior to official notification. The Board found that at the time expenses were incurred, there was an administrative intent to transfer each employee to the ultimate location. Here,

the agency had not made and the claimant had not accepted an offer to relocate. Rather, the claimant was relocating back to the United States. The correspondence and communications between the claimant and agency individuals as of March 2022 did not establish an administrative intent to transfer the employee, as higher level authorities still needed to resolve matters after the claimant incurred expenses. This conclusion of no administrative intent is supported by repeated caveats to incur no PCS expenses until receipt of a TCN and funded travel orders.

The agency has justified its determination not to reimburse claimant for the associated residence transaction expenses.

Joseph A. Vergilio
JOSEPH A. VERGILIO
Board Judge