



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

November 15, 2022

CBCA 7442-RELO

In the Matter of MINH N.

Minh N., Claimant.

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

ZISCHKAU, Board Judge.

Claimant, Minh N., submitted a claim in response to the denial by the Drug Enforcement Administration (DEA) of his claim for reimbursement of costs incurred in purchasing his new home in the Washington, D.C., metropolitan area. Claimant asserts that the purchase of the home was incident to his transfer to the DEA headquarters in the Washington metropolitan area and therefore should be reimbursed. The agency argues that it is not required, nor authorized, to reimburse the costs associated with the purchase of the home because claimant incurred the costs prior to the agency officially notifying claimant of the transfer. Because we find that the agency expressed an administrative intent to transfer claimant prior to claimant entering into a real estate purchase agreement, we grant the claim.

Background

Claimant was transferred from Bangkok, Thailand, to the DEA's headquarters in the Washington, D.C., metropolitan area. This transfer was expected as the DEA Career Progression Manual establishes that claimant, based upon his history and previous assignments, was set to rotate to the agency's headquarters following his tour in Thailand. Further, claimant's tour in Thailand was scheduled to end in June 2022. Given the five-year maximum on civilian overseas service, claimant was ineligible to extend his tour in Thailand.

On February 9, 2022, the DEA Career Board acted to transfer claimant to a position in the DEA's headquarters. An agency-wide Career Board cable sent on February 11, 2022, announced this action along with other transfers and promotions across the agency. Specifically, the cable listed the following entry for claimant, under the heading "Lateral Reassignments of GS-1811-11"

NAME: MINH [N.]
FROM: GROUP SUPERVISOR, BANGKOK CO
TO: HEADQUARTERS
TCN: PENDING

On February 12, 2022, claimant entered into a purchase agreement for a home in the Washington, D.C., metropolitan area. Later, on March 30, 2022, the agency issued claimant's transfer control number ("TCN"). The agency issued claimant's official travel orders on May 2, 2022, fully consistent with the cable of February 11, 2022. Claimant sought reimbursement of the real estate costs associated with his home purchase. The agency advised claimant that his costs were not reimbursable because the costs had been incurred prior to the agency's issuance of claimant's TCN.

Discussion

The Government is authorized by statute to reimburse relocation expenses, including real estate expenses, that are incurred incident to a federal employee's transfer of station made in the Government's interest. 5 U.S.C. § 5724a(d) (2018); 41 CFR 302-11.2 (2021) (FTR 302-11.2). However, the agency is only responsible for repaying costs that are incurred incident to the employee's transfer and "when a contract for purchase or sale is entered into before an agency manifests an intent to transfer the employee, the transaction will be considered to have been entered into for some reason other than the transfer." *Joseph Bush*, CBCA 660-RELO, 07-1 BCA ¶ 33,560, at 166,226 (quoting *Peter J. Grace*, GSBCA 16790-RELO, 06-1 BCA ¶ 33,219, at 164,635). Thus, the general rule provides that an agency may not reimburse an employee for expenses incurred prior to the agency providing the employee with formal notification of the transfer. *Tyler D. Warner*, CBCA 5215-RELO, 16-1 BCA ¶ 36,364, at 177,259.

However, we previously held in *Jason A. Johnson*, CBCA 2608-RELO, 12-1 BCA ¶ 34,914, that "travel orders are not the sole indication of the agency's intent" and a transferred employee may still be entitled to reimbursement "if the agency has manifested a 'clear administrative intent to transfer the employee at the time the expenses were incurred.'" *Id.* at 171,663 (quoting *Jorge L. Gonzalez*, CBCA 984-RELO, 08-2 BCA ¶ 34,004, at 168,162). Administrative intent is found when "a definite selection for the

position has been made and all parties concerned had a good reason to expect the transfer would be approved and effectuated.” *Id.* (quoting *Jorge L. Gonzalez*, 08-2 BCA at 168,162). In assessing whether the agency manifested administrative intent, we must consider the facts and circumstances of the specific situation. *Brandon J. Thorpe*, CBCA 2103-RELO, 11-1 BCA ¶ 34,687, at 170,847. “Expressions of intent must be particularized to specific employees, times, and places.” *Gary J. Tennant*, CBCA 553-RELO, 07-1 BCA ¶ 33,558, at 166,224 (finding that a DEA manual and other general policies did not alone constitute administrative intent).

The determination of administrative intent rests upon whether it is clear that the agency had communicated an expectation that the transfer would occur. *Compare Tyler D. Warner*, 16-1 BCA at 177,259 (holding that an email message from DEA Seattle Field Division formally confirming his selection constituted administrative intent) *with Robert M. Baum*, CBCA 5600-RELO, 17-1 BCA ¶ 36,637, at 178,436 (holding that a congratulatory email confirming tentative selection for the position was insufficient to establish administrative intent). While the Board denied the claimant’s appeal in *Brandon J. Thorpe*, the Board listed examples of sufficient evidence for administrative intent including “unofficial telephone contacts notifying an employee of a potential reduction in force, a letter stating a position is surplusage and offering assistance in locating another position, and an official announcement that the essential functions of an installation would be relocated.” *Brandon J. Thorpe*, 11-1 BCA at 170,847.

Claimant argues that the Career Board cable manifested an administrative intent by the agency to transfer claimant to the DEA headquarters in Washington. The agency responds that the cable did not represent any administrative intent as the TCN was still “pending” and the destination, timing, location, and funding of claimant’s transfer were still subject to change until the issuance of the TCN. While the Board has not addressed the question of whether a DEA Career Board cable constitutes administrative intent, we and other tribunals have discussed the DEA Career Board and its cable announcements in similar contexts. A review of these cases suggests, as claimant contends, that the DEA Career Board has the requisite authority to make promotions and transfers such as these and that the Career Board cable is treated as an official announcement of the DEA’s intent to make promotions, transfers, and similar employment decisions. In *Byron L. Wells*, the Career Board communications were sent after the purchase and sale agreements were entered into and therefore were not considered in the administrative intent analysis. However, we noted that a DEA Career Board cable provided official written notification of the employee’s transfer. *Byron L. Wells*, 08-2 BCA at 168,064. One court has found that the date of the DEA Career Board cable was the date that the agency communicated its selection decision. *Lord v. Holder*, 568 F. App’x 435, 437 (6th Cir. 2014). Thus, it is clear that the DEA Career Board is the responsible authority for making promotions and transfer decisions at the DEA and that

its cables have, in similar situations, been treated as announcements which constitute evidence of the agency's intent to take such employment actions.

The cable here is sufficient to establish administrative intent because it expresses a definite selection such that all parties had good reason to believe that the transfer would be effectuated. The cable specifically lists claimant's transfer, including his name, current assignment, and future assignment, albeit among others throughout the agency. *See Jorge L. Gonzalez*, 08-2 BCA at 168,162 (employee's phone conversations with a SAC regarding the employee's upcoming transfer was sufficient to establish administrative intent).

While the agency argues that "DEA Headquarters" referenced in the cable could also be describing other field offices, such as the El Paso Intelligence Center (EPIC), we agree with claimant that the record does not support such an interpretation. The fact that the cable states that claimant's TCN is "pending" does not contradict our finding that the cable shows that a definite selection had been made and "all parties concerned had good reason to expect the transfer would be approved and effectuated." *Jason A. Johnson*, 12-1 BCA at 171,663 (quoting *Jorge L. Gonzalez*, 08-2 BCA at 168,162). Given that the agency expressed an administrative intent to transfer claimant prior to claimant incurring his real estate expenses, the reimbursement of costs is proper.

Decision

The claim is granted.

Jonathan D. Zischkau
JONATHAN D. ZISCHKAU
Board Judge