



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

October 30, 2023

CBCA 7885-RELO

In the Matter of WILLIAM S.

William S., Claimant.

Audra L. Medeiros, Associate Counsel, Naval Undersea Warfare Center Division, Department of the Navy, Newport, RI, appearing for Department of the Navy.

LESTER, Board Judge.

Claimant asks that we direct the Department of the Navy (the agency) to reimburse real estate transaction expenses that he incurred after being told that he had been selected for a new position at a new duty station but before he had been formally notified of his selection. After reviewing the claim, the agency no longer objects to claimant's right to reimbursement of properly documented costs, but it questions whether he has adequately justified all of his expenses. We grant claimant's request for reimbursement of his real estate expenses, and we remand this matter to the agency to evaluate the amount of claimant's reimbursement.

Background

In January 2022, while employed by the Naval Undersea Warfare Center Division (NUWCD) in Newport, Rhode Island, claimant responded to a job vacancy announcement on USA Jobs through which the Office of Naval Research Global (ONR-G) was seeking to fill Science Advisor (SA) positions in several different locations, including San Diego, California. The vacancy announcement specifically advised that successful candidates might qualify for reimbursement of relocation expenses.

On March 29, 2022, after an extensive interview process, the program director for ONR-G contacted claimant by telephone to advise him of his selection for the SA position

in San Diego. Later that day, a program analyst for ONR-G sent claimant an email confirming what the program director had told him, congratulating claimant “on [his] selection” as the San Diego SA, and requesting certain information to assist in administrative processing. Claimant accepted the position and provided the requested information by email on March 30, 2022. During the March 29 communications with ONR-G, claimant was cautioned that his selection was not formal and would not be final until all SA positions had been filled and USA Jobs had sent him formal notification of his selection. As the agency has acknowledged to the Board, however, those cautions did not include a specific warning against incurring relocation expenses before his selection was finalized.

Immediately after claimant was notified of his selection, he and his wife listed their residence in Rhode Island for sale and, on March 31, 2022, entered into a purchase and sale agreement. On April 13, 2022, claimant, who was in regular communication with ONR-G managers, notified his supervisors and co-workers at NUWCD of his impending transfer, which was anticipated to occur in August 2022. On April 28, 2022, ONR-G’s SA program analyst sent an email to a large number of ONR-G employees, with a copy to claimant, notifying them of claimant’s official selection as the new San Diego SA, identifying individuals who were selected for SA positions in four other locations, and “welcom[ing] [the new SAs] to the ONRG Science Advisor team.”

On May 5, 2022, claimant closed on the sale of his Rhode Island residence, incurring and paying closing costs of \$29,500, which consisted of the following: a 4% realtor commission of \$26,000; a transfer tax of \$2990; a seller’s attorney fee of \$475; and courier fees of \$35.

On July 10, 2022, ONR-G provided funding to NUWCD for claimant’s permanent change of station. Claimant’s NUWCD commanding officer then signed claimant’s travel authorization, which included authorization for real estate expenses, on July 27, 2022. Claimant reported for duty in San Diego on August 15, 2022.

Claimant submitted a travel voucher on June 5, 2023, requesting reimbursement of \$14,750 (50% of the \$29,500 in real estate expenses identified on the closing sheet for the sale of his residence in Rhode Island). The record does not reflect why claimant sought reimbursement of only half of the real estate expenses. Claimant’s first- and second-line supervisors approved his reimbursement request, but the NUWCD travel office declined payment because claimant had incurred the real estate expenses before he had received official notice from USA Jobs of his selection for the San Diego SA position. After requesting that the agency reconsider that denial, claimant brought his claim to the Board, asking for reimbursement of the full \$29,500 amount rather than the \$14,750 figure that he had previously sought from the agency.

The record does not identify when, if ever, claimant received an official notification of his selection from USA Jobs.

Discussion

Real Estate Reimbursement Entitlement

When a federal employee transfers from one duty station in the continental United States (CONUS) to another CONUS station in the interest of the Government, “[t]he Government is required to reimburse [the employee] for real estate expenses incurred that are incident to [the] transfer of station.” *Kelli A. Baumgartner*, CBCA 6006-RELO, 18-1 BCA ¶ 37,176, at 180,947; *see* 5 U.S.C. § 5724a(d)(1) (2018); Joint Travel Regulations (JTR) 0545 (Aug. 2022). Nevertheless, the general rule is that a transferred employee will not be reimbursed for expenses that were incurred before “receipt of formal notification of the pending transfer.” *Tyler D. Warner*, CBCA 5215-RELO, 16-1 BCA ¶ 36,364, at 177,259. “[A]n exception to this general rule has been carved out and reimbursement has been allowed where, prior to the incurrence of the expense, the agency has manifested a clear ‘administrative intent’ to transfer the employee.” *Id.* “[R]eimbursement will be provided, so long as ‘a definite selection for the position has been made and all parties concerned had good reason to expect the transfer would be approved and effectuated.’” *Kelli A. Baumgartner*, 18-1 BCA at 180,947 (quoting *Jorge L. Gonzalez*, CBCA 984-RELO, 08-2 BCA ¶ 34,004, at 168,162). “[E]ven telephone contacts in which a definite offer is made, though contingent upon higher level approvals, may be sufficient to establish the requisite ‘administrative intent.’” *Id.*

In its response to claimant’s submission, the agency indicates that it now acknowledges that the March 29, 2022, telephone call and email were sufficient to express a definitive “administrative intent” to transfer him. Although claimant had not received formal notification of his selection for the San Diego SA position when, on March 31, 2022, he entered a contract to sell his residence, ONR-G’s communications on March 29 provided sufficiently definite “administrative intent” to entitle claimant to real estate transaction expense reimbursement.

The Amount of Claimant’s Reimbursement

In his submission to the Board, claimant asks the Board to require the agency to reimburse him \$29,500 in real estate expenses. The expenses that he seeks are a realtor commission, a transfer tax, a seller’s attorney fee, and courier fees. On their face, all of the claimed expenses, which are identified in the real estate transaction closing documents, would be reimbursable under JTR 054504 if claimant can establish that they were customarily paid by the seller in the locality of the real estate transaction and, with regard to

the courier fees, that they were necessary for reasons other than personal convenience.¹ *See Carolyn G.*, CBCA 6962-RELO, 20-1 BCA ¶ 37,731, at 183,128 (placing the burden of showing that a cost incurred in a real estate transaction is customarily paid in that locality on claimant); *Hwai-Tai Lam*, CBCA 703-RELO, 07-2 BCA ¶ 33,665, at 166,695 (requiring claimant to justify courier fees). Further, for half of the currently claimed amount, claimant has satisfied JTR 054506-B.1, which requires that “[a]n official designated by the commanding officer of an activity . . . review the expenses claimed and the supporting documentation . . . [to] determine if the expenses claimed are reasonable in amount and customarily paid by the seller . . . in the location of the property.” Claimant’s first- and second-line supervisors reviewed and approved the then-requested reimbursement amount of \$14,750 before the travel office denied it.

Although it seems likely that these types of charges are customarily paid by the seller in the locality, the record before us contains no information about that issue, nor does it show that the courier fees were necessary for reasons beyond personal convenience. Further, claimant now seeks reimbursement of \$29,500, even though he only sought \$14,750 when he presented his reimbursement request to the agency.² The record does not indicate

¹ Under JTR 054504-A, a “real estate commission for services in selling the residence is reimbursable, but limited to rates generally charged for such services in the old PDS locality.” Seller legal fees are reimbursable “if customarily paid by the seller at the old PDS” as part of a real estate transaction, *id.* 054504-C, as are transfer taxes. *Id.* 054504-D.4. Courier fees are reimbursable as “incidental expenses” under JTR 054504-E, *see Ramiro Ramirez*, GSBCA 14252-RELO, 98-1 BCA ¶ 29,702, at 147,218-19, *reconsideration denied*, 98-2 BCA ¶ 29,797, if the fees “were required for a reason other than personal convenience and were customarily charged to the [seller].” *Hwai-Tai Lam*, CBCA 703-RELO, 07-2 BCA ¶ 33,665, at 166,695.

² Claimant worries that his increased requested reimbursement could be viewed as coming too late—he increased his claim more than one year after he reported for duty at his San Diego permanent duty station (PDS)—and asks us to extend or waive what he interprets as a one-year time limit on submitting claims. It appears that claimant is referencing the Federal Travel Regulation (FTR) requirement that a relocating employee “complete all aspects of relocation,” including the physical acts of moving, settling any real estate transactions, and incurring relocation expenses, within one year (subject to possible extension, if timely requested) of the reporting date at the new PDS. 41 CFR 302-2.110 (2022); *see id.* 302-2.9 to -2.12, -11.21, -11.22. The FTR provisions, however, address time limits on incurring relocation costs and “do not . . . establish any specific deadline for the employee’s submission of a monetary reimbursement request or claim” for those costs. *Gavin M. Wallach*, CBCA 6620-RELO, 20-1 BCA ¶ 37,498, at 182,174. Claimant timely incurred the costs for which he seeks reimbursement, and he does not need a time extension

whether, for some reason, claimant was not personally responsible for real estate closing costs beyond the \$14,750 originally sought, *see* JTR 054501-E (limiting reimbursement to amounts actually incurred and paid by the employee and/or dependent) or why claimant otherwise originally sought only half of the \$29,500 now being claimed.

Claimant asks that he be allowed time to submit a reply to the agency's briefing through which he could provide additional information and evidence in support of his current reimbursement request. In light of the agency's expressed concerns about new information that it will have had no opportunity to evaluate, we view the better course is to remand this matter to the agency so that it may review whatever additional information claimant wishes to present and determine in the first instance the appropriate amount of claimant's reimbursement. To the extent that claimant ultimately disagrees with the agency's decision, he may return to the Board for review.

Decision

In the circumstances presented here, the timing of the agency's formal selection notification does not bar claimant from being reimbursed for real estate expenses that he incurred in the sale of his Rhode Island residence. Claimant will be entitled to reimbursement of incurred expenses that he can establish to the agency's satisfaction are customarily charged to the seller in the locality of the sale and, with regard to claimed courier fees, that were necessary for reasons other than personal convenience. We remand this matter to the agency for further evaluation.

Harold D. Lester, Jr.

HAROLD D. LESTER, JR.

Board Judge

for submitting (or increasing the amount of) his claim.