



UNITED STATES  
CIVILIAN BOARD OF CONTRACT APPEALS

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July 7, 2016

CBCA 5262-RELO

In the Matter of MICHAEL D. BEASLEY

Michael D. Beasley, Clifton, TX , Claimant.

Alice J. Hood, Chief, Transportation Division, United States Army Corps of Engineers Logistics Activity, Millington, TN, appearing for Department of the Army.

**O'ROURKE**, Board Judge.

Claimant, Michael D. Beasley, requests approval of real estate transaction expenses from the United States Army Corps of Engineers (USACE or agency) for the sale of his home in Arkansas, incident to an official move. We deny the claim.

Background

Mr. Beasley is a power plant superintendent with USACE. He is assigned to the Stockton Power Plant in Stockton, Missouri, where he has been living in a camper for the past four years. Mr. Beasley owns a home in Royal, Arkansas, where his family lives. When he transferred to the Stockton plant four years ago, his family did not move with him.

In March 2016, Mr. Beasley received permanent change of station (PCS) orders transferring him to Clifton, Texas. He plans to move his family from Arkansas to Texas, and he submitted a travel information data sheet, listing his home address as Royal, Arkansas, and his current duty station address as Stockton, Missouri. In block 31, he noted, “[M]y duty location and where my household goods will be shipped are two different locations. I will travel from Stockton, MO, to Texas, but my household goods will be shipped from Royal, Arkansas . . . to Texas, at a later date to be determined.”

In response, the agency informed Mr. Beasley that household goods could be shipped from both Missouri and Arkansas, but stated, “Since you live in Missouri you are not authorized real estate expenses for the sale of your home in Arkansas.” The agency emailed

Mr. Beasley an excerpt from the Joint Travel Regulations (JTR), supporting its determination. On March 16, 2016, Mr. Beasley received his PCS orders by email. The orders did not authorize real estate transaction expenses for the sale of his Arkansas home. He responded, “I understand there is no waiver or anything I can do to get real estate expenses for the sale of my home in Arkansas, correct?” The agency confirmed that there are no waivers, but provided him with information on making an appeal to this Board.

The Board received Mr. Beasley’s appeal on March 23, 2016. In his appeal, Mr. Beasley states, “The last time I PCSed was four years ago. I did not move my family and lost my moving expenses and eventually lost my real estate expenses.” He also points out that he has not changed his home of record; he has not established residence at his current duty station; he has been waiting for four years to sell his home; and that this is his only home. Mr. Beasley submitted a second letter to the Board on June 23, 2016. This letter merely restated his earlier position and pointed out that he saved the Government money during his moves.

The agency submitted two letters to the Board, one on May 26, 2016, and one on June 6, 2016. The first one informed the Board that the agency “had not received or denied a claim for reimbursement regarding this appeal,” and referred the matter to the USACE Logistics Activity, which supported the determination made by others in the agency, that Mr. Beasley is ineligible to receive real estate transaction expenses in connection with the sale of his home in Arkansas, because his Arkansas home “is not the place from which Mr. Beasley regularly commutes and does not reasonably relate to Mr. Beasley’s duty station.” There were no attachments to the letter showing that a claim had been received and adjudicated.

### Discussion

Our rules require that a claim for entitlement to relocation expenses must first be filed with the claimant’s own agency. Rule 402 (48 CFR 6104.402 (2015)); see *Paul E. Guelle*, CBCA 5072-RELO, 16-1 BCA ¶ 36,274. Claims filed with the Board that have not been adjudicated by the agency are typically dismissed as premature under Rule 401 (48 CFR 6104.401 (2015)). *Steve Resch*, GSBCA 14526-RELO, 1998 GSBCA LEXIS 103 (Mar. 26, 1998). However, since this requirement comes from the Board’s rules, not the language of the statute itself, application of Rule 401 is a matter of judicial discretion. *Scott E. Beemer*, CBCA 4250-RELO, 15-1 BCA ¶ 35,960 (citing *Leon Rodgers, Jr.*, GSBCA 14678-TRAV, 99-1 BCA ¶ 30,376 at 150,156). Although the agency did not formally adjudicate the claim, it declined to authorize real estate transaction expenses for the sale of his Arkansas home because he lived and worked in Missouri. The agency provided claimant with an excerpt from the JTR, defining “residence” as “the place from which the employee regularly

commutes to and from work on a daily basis (weekend travel does not qualify).” JTR 5908-B.4.a. The agency’s advice was consistent with the regulations and the decisions of this Board. *Milton Brown*, CBCA 4998-RELO, 16-1 BCA ¶ 36,205.

Given the agency’s adverse position on the submission of any claim, the fact that claimant did not first present a claim to the agency is immaterial to our review. “Where a litigant can demonstrate that resort to an administrative remedy would be futile because of the certainty of an adverse decision, exhaustion of administrative remedies will be excused.” *Richard M. Biter*, GSBCA 16062-RELO, 2004-1 BCA ¶ 32,528 (citing *Communications Workers of America v. American Telephone & Telegraph Co.*, 40 F.3d 426, 432 (D.C. Cir. 1994)).

It is well established that a claimant bears the burden of proving entitlement. *Janet D. Winn*, CBCA 4434-RELO, 15-1 BCA ¶ 35,978 (citing *Shaun L. Blocker*, CBCA 1588-RELO, 09-2 BCA ¶ 34,296). The Board’s decisions consistently condition reimbursement of real estate transaction expenses upon a showing that the residence being sold be the one from which the employee has commuted to and from work on a daily basis. *Linda Cashman*, CBCA 3495-RELO, 14-1 BCA ¶ 35,535. Claimant has not established that his home in Royal, Arkansas was the location from which he commuted to and from work in Missouri. To the contrary, it is undisputed that claimant occupied a camper in Missouri for four years while his family resided in the Arkansas home. Claimant cannot obtain reimbursement for the sale of that home now, instead of four years ago when he took the position in Missouri. Neither the statute nor its implementing regulations would authorize such reimbursement at this juncture.

### Decision

For the foregoing reasons, the claim is denied.

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KATHLEEN J. O’ROURKE  
Board Judge