UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

November 17, 2016

CBCA 5413-RELO

In the Matter of RICHARD B. PIERCY

Richard B. Piercy, Gainesville, VA, Claimant.

Michael E. Sainsbury and William J. Bailey, Jr., Office of General Counsel, Defense Contract Management Agency, Fort Lee, VA, appearing for Defense Contract Management Agency.

ZISCHKAU, Board Judge.

Richard B. Piercy, the claimant, challenges the 2013 determination of the Defense Contract Management Agency (DCMA) that it is not authorized to pay permanent change of station (PCS) expenses arising from the sale of his home in Tennessee in 2010 when he transferred from his Department of the Air Force duty station at Arnold Air Force Base in Tennessee to the United States Army Southern European Task Force (SETAF) in Vicenza, Italy. In July 2013, he accepted a position with DCMA in Manassas, Virginia, and reported for duty in August 2013. Mr. Piercy claims that 5 U.S.C. § 5724a(d)(2) (2012) requires DCMA to reimburse the 2010 expenses for the sale of his Tennessee home in connection with his 2013 transfer. We conclude that 5 U.S.C. § 5724a(d)(3) prohibits reimbursement for the expenses from the 2010 sale of his Tennessee home. Accordingly, we deny Mr. Piercy's claim.

Background

Mr. Piercy was originally stationed at Arnold Air Force Base, Tennessee. On March 17, 2010, Mr. Piercy entered into a rotation agreement, transferring him to SETAF in Vicenza, Italy. His tour was scheduled to begin on June 6, 2010, and last for thirty-six months. His travel orders for the transfer were issued on March 23, 2010.

Mr. Piercy's rotation agreement did not provide for return rights to Arnold Air Force Base. Moreover, Mr. Piercy was informed of an Air Force policy not to grant return rights to employees who transfer to foreign postings of other Department of Defense (DoD) components. However, based on the record before the Board, Mr. Piercy was not precluded from returning to Arnold Air Force Base if a position became available there. In addition, there is no evidence in the record that either the Air Force or the Army provided Mr. Piercy with official notification in 2010 that he would be assigned anywhere else after his rotation in Italy. Nevertheless, because he did not expect to return to Arnold Air Force Base, Mr. Piercy sold his house in Tennessee on May 28, 2010.

From June 2010 to August 2013, Mr. Piercy worked for SETAF in Italy. On July 11, 2013, Mr. Piercy accepted a position with the DCMA in Manassas, Virginia. On July 18, 2013, DCMA confirmed Mr. Piercy's entrance on duty date would be August 25, 2013. On July 18, 2013, SETAF issued a PCS travel authorization for Mr. Piercy, with a scheduled destination of Manassas, Virginia, and an alternate destination of Tullahoma, Tennessee. On July 22, 2013, Mr. Piercy was informed that, contrary to the indications in the vacancy announcement for the DCMA position, DCMA would not reimburse his PCS relocation expenses associated with the transfer. Mr. Piercy relocated from Italy to his new duty station in Manassas, Virginia, and incurred expenses during the move.

Beginning in early February 2016, Mr. Piercy sought reconsideration of DCMA's denial of his relocation expenses. DCMA denied reconsideration and Mr. Piercy brought this claim. During the course of our proceedings, DCMA concluded that it was obligated to reimburse Mr. Piercy for PCS expenses he incurred with respect to his transfer. Nevertheless, DCMA maintains that Mr. Piercy's expenses associated with the 2010 sale of his house in Tennessee are not reimbursable. That is the only issue presently before us.

Discussion

Mr. Piercy argues that he is entitled to reimbursement for the transaction expenses from the 2010 sale of his house in Tennessee because the sale occurred after he was informed that he did not have return rights to his position there. He argues that, because his rotation agreement indicated that his transfer abroad was without return rights, he had received the official notification required under 5 U.S.C. § 5724a(d)(3) to allow reimbursement for the sale of his prior residence. DCMA argues that lack of return rights, no matter how well documented or officially communicated, does not satisfy the official notification requirement of the statute.

The controlling statute, 5 U.S.C. § 5724a, provides that, subject to the implementing regulations:

> an agency shall pay to or on behalf of an employee who transfers in the interest of the Government from a post of duty located outside the United States to an official station within the United States (other than the official station within the United States from which the employee was transferred when assigned to the foreign tour of duty) . . . expenses required to be paid by the employee of the sale of the residence . . . of the employee at the old official station from which the employee was transferred when the employee was assigned to the post of duty located outside the United States . . . .

5 U.S.C. § 5724a(d)(2). However, the statute also provides that "[r]eimbursement of [real estate transaction expenses] shall not be allowed for any sale . . . that occurs prior to official notification that the employee's return to the United States would be to an official station other than the official station from which the employee was transferred when assigned to the post of duty outside the United States." 5 U.S.C. § 5724a(d)(3). If the sale occurred prior to the requisite official notification, then the agency has no authority to reimburse the expenses incurred in the sale, even if the employee made the sale in reliance on travel orders authorizing reimbursement. *E.g.*, *Pamela A. Mackenzie*, GSBCA 15328-RELO, 01-1 BCA ¶ 31,174 (2000) (denying agency's request to allow reimbursement of employee's real estate transaction expenses when, prior to official notification of a new United States duty station, employee sold her old residence in reliance on agency's representation that the expenses would be reimbursed).

The implementing regulations for section 5724a(d) are found in part 302-11 of the Federal Travel Regulation (FTR). The FTR is implemented for civilian employees of the Department of Defense in the Joint Travel Regulations (JTR). Under the FTR and JTR, official notification ordinarily occurs in the form of a change of station travel order/authorization. 41 CFR 302-11.305 (2010) (FTR 302-11.305); JTR C5750-D.5. Although the language of the regulations leaves open the possibility that other agency actions might constitute official notification, an agency act will qualify as official notification only if it definitively communicates that the employee will not be returning to his or her prior United States duty station. *See Timothy S. Haymend*, 73 Comp. Gen. 153 (1994); *Robert M. Hooks*, 72 Comp. Gen. 130 (1993). For example, in *Robert M. Hooks*, agency officials informed the employee at the time of his transfer from Alaska to Singapore that he would not be returning to Alaska because, pursuant to an agency regulation, his return rights would be to his prior position in Georgia. Similarly, in *Timothy S. Haymend*, the employee was informed at the time of his transfer from Hawaii to South Korea that his next assignment would be in Virginia because of an agency regulation limiting the amount of time employees could be assigned outside the continental United States.

Conversely, an employee's lack of reemployment rights or return rights to his or her prior United States duty station does not constitute official notification that the employee will

return to a different duty station. *E.g.*, *Robert J. Wright*, GSBCA 15399-RELO, 01-1 BCA ¶ 31,368, at 154,902 (no official notification where employee's return rights were canceled in anticipation of base closure); *Harry T. Teraoka*, GSBCA 13641-RELO, 97-1 BCA ¶ 28,796, at 143,641 (no official notification when an employee was transferred from Hawaii to Germany without return rights).

Unlike the claimant in *Robert M. Hooks*, Mr. Piercy was not informed prior to the sale of his house that he would not be returning to the duty station where the house was located, nor did Mr. Piercy have return rights to a different United States duty station. Similarly, unlike the claimant in *Timothy S. Haymend*, no regulation prohibited Mr. Piercy from accepting an assignment at his prior duty station. Rather, similar to the claimants in *Harry T. Teraoka* and *Robert J. Wright*, Mr. Piercy was informed that he had no return rights to his prior duty station without any official communication concerning where he would be stationed after his assignment abroad.

Mr. Piercy argues that one of the cases cited by the agency, *Donald W. Owens*, GSBCA 16533-RELO, 05-1 BCA ¶ 32,875, merely stands for the proposition that an email message from the employee's supervisor does not constitute official notification. He contrasts that with his rotation agreement, which became part of his official personnel record. He argues that the rotation agreement satisfied the requirement for official notification because it informed him that he had no return rights. However, the decision in *Donald W. Owens* explicitly states, "[a]lthough Mr. Owens' supervisor told Mr. Owens that he did not have return rights to Plant City, *the lack of return rights does not constitute official notification that the employee will not return to his former duty station*." 05-1 BCA at 162,910 (emphasis added).

Mr. Piercy did not receive official notification that his next duty station in the United States would be other than Tullahoma, Tennessee, until July 2013. He indicates that, in May 2010, he was aware that he would not be returning to Arnold Air Force Base because, pursuant to Air Force policy, he had no return rights to the duty station and his prior position would be filled as quickly as possible. However, his lack of return rights at Arnold Air Force Base meant only that he did not have a guaranteed position there. It did not preclude him from taking a position there if one became available. *See John W. McCollum*, GSBCA 13671-RELO, 97-1 BCA ¶ 28,863, at 143,993 ("Although Mr. McCollum had no right to return to Fort Knox, he was not prohibited from returning there if a vacancy for which he was qualified had existed at the time he made a permanent change of station back to the United States."). Mr. Piercy may not have intended to pursue any position at Arnold Air Force Base, but his intentions are not official notification from the agency. *See Michael R. Bischoff*, CBCA 3110-RELO, 13 BCA ¶ 35,271, at 173,138 ("When Mr. Bischoff left Arkansas, he may have wanted not to return, but he was not officially notified that he would not return."). Nevertheless, even assuming that Mr. Piercy had no prospects of returning to Arnold Air

Force Base after he left, the first official notification that he would not return there was issued in July 2013, when he was instructed to report to Manassas, Virginia, to begin work at DCMA.

Mr. Piercy is not entitled to receive reimbursement for real estate transaction expenses associated with the sale of his house in Tullahoma, Tennessee, because the sale occurred prior to any official notification that his next duty station would be somewhere other than his previous station. The sale of the house was completed on May 28, 2010. Mr. Piercy did not receive the requisite official notification until July 18, 2013, when he received instructions to report to Manassas, Virginia. Therefore, 5 U.S.C. § 5724a(d)(3) prohibits DCMA from reimbursing expenses he incurred in the 2010 sale.

Decision

Mr. Piercy's claim for real estate expenses in connection with the 2010 sale of his home in Tennessee is denied.

JONATHAN D. ZISCHKAU
Board Judge