



UNITED STATES  
CIVILIAN BOARD OF CONTRACT APPEALS

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March 17, 2022

CBCA 7259-RELO

In the Matter of DAVID G.

David G., Claimant.

Karissa D. Getz, Office of Counsel, Norfolk Naval Shipyard, Department of the Navy, Portsmouth, VA, appearing for Department of the Navy.

**SHERIDAN**, Board Judge.

Claimant, David G., is a civilian employee of the Norfolk Naval Shipyard, Department of the Navy (agency or Government). He has asked this Board to review the agency's refusal to reimburse him for \$30,368.33 in real estate expenses incurred during a permanent change of station (PCS) move. The agency incorrectly denied reimbursement of claimant's real estate expenses because claimant: 1) was on a long-term temporary duty (TDY) assignment in the interest of the Government, where the "regular commute" test loses meaning; 2) would have commuted to and from his residence on a daily basis but for the long-term TDY assignment; and 3) is seeking reimbursement for expenses incurred from the sale of his residence at his last official duty station prior to his TDY assignment.

Background

Claimant's house and old permanent duty station (PDS) were both in Chesapeake, Virginia. In early August 2013, claimant's supervisor asked claimant about his interest in relocating to Kings Bay, Georgia, in about a year and a half. A few months later, in October 2013, the supervisor asked claimant if he could begin working at Kings Bay immediately. Claimant agreed and began working at Kings Bay on TDY status on or about November 12, 2013.

At the start of his TDY assignment in Kings Bay, claimant signed two one-year leases in Ponte Vedra, Florida. On or about August 24, 2014, claimant received a Standard Form 50 indicating that his Kings Bay TDY location was now his PDS.

On January 8, 2015, claimant was issued DD Form 1614 – Request/Authorization for DoD Civilian Permanent Duty, which served as an official notification of his PCS. The agency authorized reimbursement of real estate expenses on claimant’s PCS orders.

After receiving his PCS orders, claimant also signed two additional one-year leases at the same residence in Ponte Vedra, Florida. On or about April 27, 2016, claimant sold his Chesapeake, Virginia, house, which had been on the market since March 25, 2015.

### Discussion

Employees who are transferred by an agency in the interest of the Government from one PDS to another are entitled by statute, subject to regulations issued by the Administrator of General Services, to reimbursement from the agency for real estate expenses associated with the selling of the employee’s residence at the old duty station. 5 U.S.C. §§ 5724a(d), 5738(a)(1) (2018). The Federal Travel Regulation (FTR) specifies when real estate transaction expenses are reimbursable. *See* 41 CFR pt. 302-11 (2014) (FTR pt. 302-11).

The general rule is that “you may receive reimbursement for the one residence from which you regularly commute to and from work on a daily basis and which was your residence at the time you were officially notified . . . to transfer to a new official station,” FTR 302-11.100, and that “to be reimbursed for expenses incurred in your residence transactions, you must occupy the residence at the time you are notified of your transfer.” FTR 302-11.5. Relying on these regulatory provisions, this Board and our predecessor for travel and relocation matters, the General Services Board of Contract Appeals (GSBCA), have often ruled that an agency does not have authority to reimburse a transferred employee for real estate expenses on the sale of a home from which the employee did not commute regularly on a daily basis. *See Myles England*, CBCA 1244-RELO, 09-1 BCA ¶ 34,045 (2008); *Allan E. McLaughlin*, CBCA 691-RELO, 07-2 BCA ¶ 33,666; *William Duncan Baker*, GSBCA 16928-RELO, 07-1 BCA ¶ 33,453 (2006); *Uta Acker*, GSBCA 16619-RELO, 05-2 BCA ¶ 32,999; *Amos F. Jones, Jr.*, GSBCA 16305-RELO, 04-2 BCA ¶ 32,677.

The agency argues that, per FTR 302-11.100 and FTR 302-11.5, claimant is not entitled to PCS benefits because he was not commuting to and from work on a daily basis from his Virginia home at the time of his permanent transfer and because he did not occupy his residence when he received his PCS orders due to the fact that he had already established residency in Florida. The agency states that establishing another residence prior to receiving PCS orders is considered to be for the employee's convenience.

This Board, the GSBCA, and the Comptroller General have recognized an exception to the "regular commute" rule, which holds that an employee on extended TDY who would have commuted to and from the employee's residence on a daily basis, but for the extended TDY assignment, may be reimbursed for real estate expenses incurred during a PCS move. *See Jared J. Garth*, CBCA 5101-RELO, 16-1 BCA ¶ 36,323; *Richard S. Citron*, GSBCA 15166-RELO, 2000 WL 145481 (Jan. 28, 2000); *Regina V. Taylor*, GSBCA 13650-RELO, 97-2 BCA ¶ 29,089; *Charles P. Ball*, B-223407 (June 18, 1987); *Frank M. Lindeen*, B-188657 (Dec. 30, 1977); *R.P. Hogan*, B-164043 (May 28, 1968).<sup>1</sup> The GSBCA narrowed this exception by requiring that the residence for which an employee can be reimbursed must be the employee's residence at the employee's last official duty station prior to the employee's temporary transfer. *See Kenneth H. Hulick*, GSBCA 14045-RELO, 98-2 BCA ¶ 30,057. This exception acknowledges both the fact that the non-occupancy of the employee's home is due to government action as well as the argument that the Government cannot expect an employee to commute from his or her home to his or her old PDS while away on TDY. *Citron*. The exception also ensures that government employees will not be penalized for accepting an extended TDY assignment in the interest of the Government. *See id.*

It is clear that claimant was living in Florida and was therefore not commuting to and from work on a daily basis from his Virginia residence at the time he was notified of his permanent transfer, thereby not meeting the requirements of FTR 302-11.100. It is equally clear that claimant could not occupy his Virginia residence when he was notified of his PCS, thereby not meeting the requirement of FTR 302-11.5.

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<sup>1</sup> We note that the original statute authorizing reimbursement of real estate transaction expenses, enacted in 1967, Pub. L. No. 90-83, § 5724a (a)(4), 81 Stat. 205 (1967) (codified at 5 U.S.C. § 5724a(d)(1)), has evolved somewhat to take some of the statutory text and put it into the FTR. The intent of the statute remains substantively the same for our analysis here, "to reimburse employees for the expenses of selling and buying residences incident to transfer." *Judith A. Sukol*, CBCA 2092-RELO, 10-2 BCA ¶ 34,574 (citing *Sara B. Harris*, B-212171 (Sept. 27, 1983)).

However, claimant meets the exception to the “regular commute” rule and therefore does not need to meet the requirements of FTR 302-11.100 and FTR 302-11.5. Per the first part of the exception, claimant correctly argues that the fact that he was not living in and commuting from his Virginia residence on a daily basis should not be a controlling factor because he was on extended TDY for the benefit of the Government and could not have realistically lived in his house and commuted from Virginia to Georgia daily. Even though establishing residency in Florida was convenient for claimant, claimant nonetheless did so while on TDY in the interest of the Government.

Per the second part of the exception, we find it reasonable to assume that claimant would have been commuting to and from his residence but for his long-term TDY assignment because claimant’s house and old PDS were both in Chesapeake, Virginia. Further, claimant’s Virginia home, the residence for which claimant is seeking reimbursement, was the residence at claimant’s last official duty station prior to his temporary transfer, thus meeting the requirement of *Hulick*.

The agency also argues that the Government did not have clear administrative intent to transfer claimant permanently before his PCS orders were issued. The general rule is that employees will not be reimbursed for any residence transaction expenses occurring prior to issuance of a travel authorization (e.g., PCS orders). FTR 302-11.305. The doctrine of clear administrative intent provides an exception to this rule by allowing expenses to be reimbursed prior to the receipt of PCS orders if the agency “manifested an intent to transfer the employee at the time the expenses are incurred.” *Larry A. Rives*, CBCA 805-RELO, 07-2 BCA ¶ 33,684.

We do not have to decide whether the Government had administrative intent to permanently transfer claimant before his PCS orders were issued because the doctrine of clear administrative intent does not apply to this case. Claimant is not seeking reimbursement for residence transaction expenses incurred prior to receiving his PCS orders. He requests reimbursement for residence transaction expenses incurred after receiving his PCS orders on January 8, 2015. Claimant put his house on the market on March 25, 2015, and sold it on or about April 27, 2016. The expenses associated with that sale are the only residence transaction expenses claimant seeks to recover, and he incurred those costs after he received his PCS orders.

Decision

Having seen no statutory or regulatory intent to penalize a federal employee by depriving him or her of residence transaction expenses incidental to a PCS when he or she is performing long-term TDY for the benefit of the Government and having established that claimant meets the exception to the “regular commute” rule, the claim is remanded to the agency for calculation of real estate expenses which may be reimbursed.

*Patricia J. Sheridan*

PATRICIA J. SHERIDAN

Board Judge