



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

November 7, 2007

CBCA 698-RELO

In the Matter of KEITH J. PERNICIARO

Keith J. Perniciaro, Key West, FL, Claimant.

William R. Kraus, Office of the Principal Legal Advisor, Immigration and Customs Enforcement, Washington, DC, appearing for Department of Homeland Security.

GILMORE, Board Judge.

In this matter, claimant, Keith Perniciaro, asks the Board to review the decision of the Department of Homeland Security, Immigration and Customs Enforcement, Office of Investigations (agency), through its Dallas Finance Center (DFC), to deny authorization for reimbursement of certain real estate expenses pursuant to his permanent change of station (PCS) orders.

Background

On February 13, 2007, claimant was notified of the agency's intent to reassign him from his position in the Office of Special Agent in Charge in Miami, Florida, to the Office of the Assistant Special Agent in Charge in Las Vegas, Nevada. On March 26, 2007, claimant was notified that he was being reassigned to Key West, Florida, instead of Las Vegas.

At the time claimant received these reassignment notices, he was living in Miramar, Florida, in a residence he did not own. At some point prior to September 27, 2006, the date of his divorce, he had moved from another residence in Miramar that he jointly owned with his ex-wife. He advised the DFC that he had intended to buy out his ex-wife's 50% interest

in the home and live in it, and it was unfair to deny him any real estate expenses if he were to sell the home because of his reassignment.

The DFC advised him that it was not authorizing any real estate sale expenses on his PCS orders because, at the time he received the notices of reassignment, he was not living in, nor commuting to work from, the home for which he sought to recover expenses, as required by the regulations.

Discussion

When an employee transfers in the interest of the Government from one official station to another for permanent duty, the agency is to reimburse the employee for expenses of the sale of the employee's residence (or settlement of an unexpired lease) at the old official station. 5 U.S.C.A. § 5724a(d)(1) (2007). Under the Federal Travel Regulation (FTR), which implements this statutory provision, to qualify for reimbursement, the residence must be the one "from which [the employee] regularly [commuted] to and from work on a daily basis and which was [the employee's] residence at the time [the employee was] officially notified by competent authority to transfer to a new official station." 41 CFR 302-11.100 (2006).

Here, when claimant received his notices of reassignment, he was not residing in, nor commuting to work from, the home for which he sought expenses in Miramar, Florida. He had not lived there since some time before his divorce on September 27, 2006. Thus, he is not entitled to be reimbursed for any expenses associated with the sale of that home. *See Uta Acker*, GSBCA 16619-RELO, 05-2 BCA ¶ 32,999; *Wayne A. Wetzel*, GSBCA 16017-RELO, 03-1 BCA ¶ 32,224.

Decision

We sustain the agency's decision not to authorize any expenses associated with the sale of the home owned by claimant and his former wife.

BERYL S. GILMORE
Board Judge