



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

May 4, 2012

CBCA 2651-RELO

In the Matter of KENNON TUCK

Kennon Tuck, Pike Road, AL, Claimant.

Paul N. Bley, Office of General Counsel, TRICARE Management Activity, Department of Defense, Falls Church, VA, appearing for Department of Defense.

KULLBERG, Board Judge.

Claimant, Kennon Tuck, seeks reimbursement in the amount of \$3451.58 for the cost of his house hunting trip. The TRICARE Management Activity (TRICARE), which is an activity within the Department of Defense (DoD), contends that Mr. Tuck is not entitled to reimbursement because he did not transfer to his new duty station. For the reasons stated below, the Board denies the claim.

Background

Mr. Tuck's organization within TRICARE was relocated from Montgomery, Alabama, to San Antonio, Texas, and on June 30, 2011, he executed a transportation agreement for the transfer of his position with TRICARE. Under that agreement, Mr. Tuck was required to remain in Government service for a minimum of twelve months after reporting to his new duty station unless he was separated for reasons beyond his control and acceptable to his agency. Failure to comply with the terms of that agreement would result in liability for any amounts paid by the Government in connection with his transfer.

After signing the transportation agreement, DoD issued orders for his transfer. Mr. Tuck went on a house hunting trip to San Antonio, Texas, during August 16-25, 2011. He incurred costs on his government credit card for the trip that totaled \$3451.58. By letter dated September 28, 2011, Mr. Tuck informed his supervisor that he could not accept the transfer to San Antonio because he had not been able to sell or rent his home in Montgomery.¹ In his letter, he stated the following:

The economy and housing market are in a major slump and we have not been able to sell our current home here in Montgomery, Alabama. A move at this time will force us to maintain two households, which we are not able to do financially. There was not a home buy-out option as part of the relocation and we cannot afford to continue to pay for a home indefinitely until it [sells].

Mr. Tuck subsequently sought reimbursement for his house hunting trip. DoD denied reimbursement, and Mr. Tuck submitted his claim to the Board.

Discussion

The issue in this matter is whether Mr. Tuck can be reimbursed for his house hunting trip to San Antonio in spite of the fact that he did not complete the transfer. It is well established that when an employee goes on a house hunting trip but subsequently fails to transfer to the new duty station, reimbursement for the house hunting trip will only be allowed if the reason for not accepting the transfer was beyond the employee's control and acceptable to the agency. *Thomas W. Burt*, GSBCA 14537-RELO, 98-2 BCA ¶ 29,751, at 147,441 (citing *Murrel C. Hoage*, 63 Comp. Gen. 187 (1984); *Richard J. Hughes*, B-197816 (June 24, 1981); *William C. Moorehead*, 56 Comp. Gen. 606 (1977)). Such a determination by the agency will not be disturbed unless it is arbitrary, capricious, or without rational basis. *Id.* The employee has the burden of proof to show that his failure to transfer to the new duty station was for reasons beyond his control. *Id.*

The Board finds that Mr. Tuck has not met his burden of proving that the circumstances he encountered in attempting to either sell or rent his home were beyond his control. Unsupported assertions by an employee that he could not transfer to a new duty station because of difficulties with the sale of a home are not sufficient to establish circumstances beyond that employee's control. *Arthur Hubbard*, CBCA 1932-RELO,

¹ Mr. Tuck subsequently left government service.

10-2 BCA ¶ 34,540, at 170,348 (employee's belief that sale of his home would result in a loss was insufficient to establish circumstances beyond his control). Although Mr. Tuck has argued that he was unable to sell or rent his home and could not afford to maintain homes in both Montgomery and San Antonio, he has presented no evidence of the efforts he made to either sell or rent his home and why those efforts prove circumstances beyond his control. Accordingly, the Board does not find that DoD was unreasonable in denying reimbursement for his house hunting trip.

Also, Mr. Tuck argues that TRICARE relied on provisions of the Joint Travel Regulations (JTR) that only apply to "the employee or appointee . . . who reports to work and resigns from that position or refuses to perform his/her job." This case does not involve a separation from service after transferring, but that fact does not change the result in this matter. As discussed above, the General Services Administration Board of Contract Appeals decision in *Thomas W. Burt* addressed the issue raised in this case, which was whether the employee's reason for not transferring was beyond his control and acceptable to the agency. 98-2 BCA at 147,441.

Finally, Mr. Tuck contends that he was advised by a DoD official that a house hunting trip was authorized "without prejudice or violations" and he would only be "liable or in violation . . . after moving household goods (HHG) and accepting Permanent Duty Travel (PDT) to the assigned Permanent Duty Station (PDS) by the reporting date of the new position." An employee cannot rely upon erroneous advice to avoid liability for relocation costs when the agency determines that the employee's failure to transfer was not for reasons beyond his control. *See Arthur Hubbard*, 10-2 BCA at 170,348. Regardless of what advice Mr. Tuck may have received, the Board cannot rule that he should be reimbursed for the cost of his house hunting trip absent a finding that DoD's determination was not reasonable.

Decision

The claim is denied.

H. CHUCK KULLBERG
Board Judge