



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

May 17, 2010

CBCA 1866-RELO

In the Matter of CONNIE J. HOLLIDAY

Connie J. Holliday, Tulsa, OK, Claimant.

Jennifer A. Aranda, Assistant District Counsel, United States Army Corps of Engineers, Tulsa, OK, appearing for Department of Army.

SHERIDAN, Board Judge.

Claimant, Connie J. Holliday, is a civilian employee of the United States Army Corps of Engineers (USACE). She has asked this Board to review the agency's refusal to reimburse her for \$16,670.74 in real estate expenses incurred during a permanent change of station (PCS) move. When reimbursement of allowable real estate expenses is authorized for the sale of a home at claimant's former permanent duty station, but the home that is sold is not the location from which claimant regularly commuted to work on a daily basis, claimant is not entitled to reimbursement of the real estate expenses she incurred as a result of the home sale transaction.

Factual Background

Claimant was issued travel orders dated August 4, 2009, authorizing, among other things, real estate expenses incurred during a PCS move associated with her transition from employment with the General Services Administration (GSA) located in Oklahoma City, Oklahoma, to the USACE Tulsa District Office in Tulsa, Oklahoma. Block 28 of the travel orders provided: "Real Estate expenses are authorized for the sale of home at old PDS [permanent duty station] and purchase of home at new PDS." The effective date of claimant's transfer to the USACE was August 16, 2009, and she reported for duty August 17, 2009.

On September 29, 2009, claimant sold her home in Austin, Texas, and subsequently sought reimbursement of \$16,670.74 in real estate expenses associated with the sale. When the USACE discovered that the home sale occurred in Austin, Texas, and claimant's duty station immediately prior to joining the USACE was located in Oklahoma City, the USACE determined that, based on a review of the applicable statute, case law, and the Joint Travel Regulations (JTR), reimbursement of the real estate expenses was not allowed.

Claimant represents that while employed with the GSA, and stationed in Oklahoma City, she stayed with her mother and, on a weekly basis, traveled to her home in Austin, frequently working from her Austin home one day a week.

Discussion

By statute, agencies are to reimburse employees for real estate expenses incurred in the sale of a residence at the old official station incident to a transfer in the interest of the Government. 5 U.S.C. § 5724a(d) (2006). The relevant Federal Travel Regulation (FTR) section implementing this statutory provision addresses reimbursement of costs related to the sale of an employee's home:

For which residence may I receive reimbursement for [sic] under this subpart?

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 by competent authority to transfer to a new official station.

41 CFR 302-11.100 (2009). The JTR, also applicable to claimant as a Department of Defense employee, has the same requirement. JTR C5750-B.4.

In support of her claim, claimant alleges that she did not have a regular place from which she commuted to work on a daily basis. Claimant appears to take the position that her stay with her mother in Oklahoma City was only a temporary situation that should not impact her reimbursement. For purposes of assessing claims such as this, reimbursement for the sale of a residence is conditioned upon claimant showing that he or she commuted on a daily basis from that residence. *Myles England*, CBCA 1244-RELO, 09-1 BCA ¶ 34,045 (2008); *Allan E. McLaughlin*, CBCA 691-RELO, 07-2 BCA ¶ 33,666. The facts show that claimant commuted to her job on a daily basis from her mother's home in Oklahoma City and returned to her home in Austin each weekend. She also worked from the Austin home once a week. It is clear that claimant did not "regularly commute to and from work on a daily basis" from

her Austin home. This Board and its predecessor in settling claims by federal civilian employees for relocation, the General Services Board of Contract Appeals, have consistently 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. *Myles England*; *Allan E. McLaughlin*; *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.

Claimant also asserts that she asked USACE personnel if her staying in Oklahoma City would cause a problem with her PCS benefits, and was assured that it would not. Claimant says she would not have sold her Austin home had she known she would not be reimbursed for real estate expenses associated with that sale.

Even if the Board accepts that claimant was given erroneous advice regarding the reimbursement of real estate expenses, incorrect advice provided by government officials cannot create or enlarge entitlements that are not provided by statute or regulation. *Emily G. Gibson*, CBCA 1160-RELO, 08-2 BCA ¶ 33,946; *Joseph E. Copple*, GSBCA 16849-RELO, 06-2 BCA ¶ 33,332. Although it is regrettable that claimant may have been given erroneous advice concerning her eligibility for certain benefits in conjunction with her PCS move, the agency nonetheless lacks the authority to pay these expenses. *Robert L. McCall*, CBCA 1247-RELO, 08-2 BCA ¶ 33,998; *Amos F. Jones, Jr.*; *Albert R. Wilcox*, GSBCA 15776-RELO, 02-2 BCA ¶ 31,864. So, too, this Board does not have the authority “to waive, modify, or depart from the Government’s official travel regulations for the benefit of any federal employee who is subject to them.” *England* at 168,382 (citing *Charles T. Oliver*, GSBCA 16346-RELO, 04-1 BCA ¶ 32,614, at 161,405).

We find that claimant did not commute from her home in Austin on a daily basis and is not entitled to reimbursement of the real estate expenses she incurred as a result of the sale of the home.

Decision

The claim is denied.

PATRICIA J. SHERIDAN
Board Judge