UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

June 8, 2010

CBCA 2029-RELO

In the Matter of DONALD N. STRIEJEWSKE

Donald N. Striejewske, Fort Drum, NY, Claimant.

Dane Swenson, Chief, Strategic Planning and Policy Division, Per Diem, Travel and Transportation Allowance Committee, Department of Defense, Arlington, VA, appearing for Department of Defense.

DANIELS, Board Judge (Chairman).

An official of the Department of Defense seeks a decision pursuant to 31 U.S.C. § 3529 (2006) as to whether the department may amend travel orders issued to Donald N. Striejewske regarding his transfer of official station. We conclude that the controlling regulations preclude the orders from being amended to provide the benefit Mr. Striejewske seeks.

Mr. Striejewske was transferred from Georgia to New York in November 2009. His travel orders authorized reimbursement of expenses he might incur in selling his home in Georgia and buying one in New York.

Following his transfer, Mr. Striejewske tried hard to sell his home in Georgia. Although he reduced the asking price twice, and his realtor showed the house diligently, he was unable to sell the house. His wife and children remain in the Georgia residence, while he lives in temporary quarters in New York.

Mr. Striejewske's supervisor is persuaded that the family is enduring significant financial hardship as a result of its inability to sell the house. He asks whether he may amend

the travel orders to authorize the offering of relocation services, including the purchase of the house by a relocation services contractor, so that the residence may be sold.

The Joint Travel Regulations (JTR), which apply to the transfer of Department of Defense civilians like Mr. Striejewske, speak directly to the issue presented. Section C5810-E of the JTR states, "The authorization for Relocation Services must be *on the original PCS [permanent change of station] travel authorization/order*, even if contingent on circumstances (e.g., hardship situations after an aggressive attempt to sell the home). See par. APPI3, par. E1b(7)." (Emphasis added.) The cited paragraph of Appendix I states:

> Agencies have the discretion to authorize Relocation Services due to hardship situations only if supported by agency policy and documented *on the initial PCS travel authorization/order*. If Relocation Services is contingent, the block must be checked on the travel authorization/order with reference to the remarks section. [Emphasis added.]

Mr. Striejewske's supervisor has been advised of these rules. He states that he did not know of them when he signed the orders and that if he had, to soften the blow from the kind of hardship situation that has befallen the employee, he would have included a contingent authorization for the provision of relocation services.

To determine whether the orders might be amended now, we examined decisions by our predecessors in settling federal employee travel and relocation expense claims, the General Services Board of Contract Appeals and the Comptroller General. These decisions make clear that travel orders may be amended retroactively in limited circumstances. Among those circumstances are (a) there is an error on the face of the orders, (b) the orders do not conform to applicable statutes and regulations, and (c) "the facts and circumstances surrounding the issuance of an authorization clearly demonstrate that some provision which was previously determined and definitely intended to be included was omitted through error or inadvertence in preparing the authorization." *Diane F. Stallings*, GSBCA 16793-RELO, 06-1 BCA ¶ 33,201; *see also Stephen S. Talbot*, GSBCA 16507-TRAV, 05-1 BCA ¶ 32,848 (2004); *Brian P. Byrnes*, GSBCA 14195-TRAV, et al., 98-1 BCA ¶ 29,535.

The situation presented here surely does not fit within either of the first two categories of exceptions to the general rule against retroactive amendment of travel orders. The third category does not apply, either, for there is no evidence that Mr. Striejewske's supervisor intended to include the authorization for relocation services in the original travel orders. The best that can be said is that he wishes, based on what he knows now, that he had done so, and that is not sufficient to justify the amendment. 28 Comp. Gen. 732 (1949).

Although we sympathize with Mr. Striejewske and understand why his supervisor would like to help extricate him from the financial hardship resulting from his transfer, the clear language of the relevant JTR provisions prevents us from advising that the amendment in question may be made.

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STEPHEN M. DANIELS
Board Judge