



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

July 21, 2016

CBCA 5109-RELO

In the Matter of ALPHONSO S. HAMILTON

Alphonso S. Hamilton, North Pole, AK, Claimant.

Karen A. Farmer, Chief, Resource Management Office, United States Army Corps of Engineers, Joint Base Elmendorf-Richardson, AK, appearing for Department of the Army.

O'ROURKE, Board Judge.

Claimant, Alphonso S. Hamilton, requests reimbursement of unexpired lease expenses incurred when the Government transferred him to Alaska. We grant the claim.

Background

Claimant is a construction representative with the United States Army Corps of Engineers (hereinafter USACE or the agency) in Alaska. On June 11, 2015, claimant received permanent change of station (PCS) orders, moving him from California to Alaska. According to his PCS orders, his required reporting date was July 12, 2015. Claimant had thirty days to report to his new duty station. The distance between his old and new duty stations is approximately 3500 miles. The orders authorized unexpired lease expenses.

At that time, claimant and his family were renting a home. According to the lease, the rental period began on November 1, 2014, and terminated on October 31, 2015. Four months were left in the lease period when claimant was transferred. The rent was \$1100 per month, so he owed \$4400 for the remaining four months. The lease prohibited subletting without the owner's consent and held the lessee responsible for rent due under any unexpired term of the lease.

Upon receipt of orders, claimant stated he immediately contacted the owner to discuss the situation. Claimant maintained that his relationship with the owner had been positive until that moment, when the owner realized his tenant was leaving on short notice with four months remaining on the lease. Claimant requested to get out of the lease entirely since he was moving on government orders, but the owner refused that option. They then discussed the possibility of subleasing, but the owner put the burden on claimant to find an acceptable tenant prior to him leaving. According to claimant, the rental market in Barstow, California, was challenging because it was hard to find good tenants. The owner was inflexible about the type of tenant he would accept and gave claimant a long list of requirements the new tenant must meet. Even then, the owner stated that he would not accept a sublease on a referral—he would have to vet the new tenant himself. Claimant stated that it took the owner thirty days to vet him and his family. For these reasons, claimant and the owner realized the futility of the subleasing option and negotiated a settlement of the rent for the unexpired lease term in the amount of \$2250, which claimant paid. The settlement also provided for the termination of the lease and claimant’s release from any further obligations thereunder.

Claimant filed a travel voucher to recoup the \$2250 he paid in unexpired lease expenses as well as a cleaning fee of \$385. The agency denied his claim for both expenses. Claimant appealed the denial of his claim to this Board.

Discussion

Congress provided federal employees with certain relocation benefits to alleviate the costs associated with an official transfer. 5 U.S.C. 5724a(d)(1) (2012); *see Kevin D. Reynolds*, CBCA 2201-RELO, 11-1 BCA ¶ 34,756. The Federal Travel Regulation (FTR) implements these statutory provisions; it has the force of law and must be followed. *Stephen F. Fischer*, CBCA 875-RELO, 08-1 BCA ¶ 33,771 (citing *Teresa M. Erickson*, GSBCA 15210-RELO, 00-1 BCA ¶ 30,900, at 152,473). In response to the question, “[w]hen are expenses for my settlement of an unexpired lease reimbursable,” the FTR states:

you may be reimbursed for settlement expenses for an unexpired lease . . . if:

- (a) Applicable laws or the terms of the lease provide for payment of settlement expenses; or
- (b) Such expenses cannot be avoided by sublease or other arrangement; or
- (c) You have not contributed to the expenses by failing to give appropriate lease termination notice promptly after you have definite knowledge of your transfer; or
- (d) The broker’s fees or advertising charges are not in excess of those customarily charged for comparable services in that locality. 41 CFR 302-11.7 (2014).

In this case, the lease did not specifically provide for payment of settlement expenses, and there is no evidence that claimant failed to promptly notify the owner of his intent to transfer. Since he did not sublet the home, broker's fees and advertising costs were not applicable. That leaves the second condition, "such expenses cannot be avoided by sublease or other arrangement," which is the provision the agency focuses on in its analysis.

Although claimant's PCS orders specifically authorized unexpired lease expenses, the record was not adequately developed when claimant presented his claim to the agency, which denied the claim because claimant "did not request lessor's permission to sublet or attempt to sublet." The Department of Defense's Joint Travel Regulations (JTR) provide procedures for filing a claim, one of which is to submit "a statement of the extent of bona fide attempts made to avoid penalty costs if the lease includes a savings provision for subleasing or making other arrangements to avoid penalty costs." JTR 5916-B.2. Claimant's initial statement did not satisfy the agency because it failed to sufficiently describe "the extent of bona fide attempts made to avoid penalty costs."¹ Claimant's second statement, however, provided substantial detail about his actions with regard to his attempts at avoiding costs.

When analyzing whether unexpired lease expenses are reimbursable, a question is whether they were avoidable under the circumstances. See *Carl E. Landrum*, CBCA 2663-RELO, 12-1 BCA ¶ 35,010 ("Compensation is barred only where the employee could have reasonably avoided the charges."). The agency correctly employed a standard of "reasonable prudence" in assessing claimant's attempts to avoid expenses. The Board has supported the use of this standard in the past. "Before incurring miscellaneous expenses, an employee is expected to exercise the same care as a prudent person relocating at personal expense." *Zaki M. Saad*, CBCA 1370-RELO, 09-1 BCA ¶ 34,065.

To decide whether or not claimant's expenses were reasonable, we review the relevant facts and circumstances as they existed at the time of the transfer. "A determination as to whether the employee could have avoided charges is not to be made in hindsight, but rather must take into account the facts at the time." *Landrum*. The relevant facts in this case include the terms of the lease, the number of months remaining in the lease, the outstanding balance on the lease, the number of days claimant had to move, the distance he was traveling, the nature of the expenses incurred, and the attempts he made to avoid costs.

The agency gave claimant exactly thirty days to move his family to Alaska, which, according to the FTR, is considered the minimum number of days for reasonable advance notice of a transfer. The distance between the two duty stations is approximately 3500 miles.

¹ Claimant submitted a digitally signed statement containing three sentences, in which he "certifies" he made "legitimate attempts to avoid penalty costs associated with the breaking of this lease." However, he did not describe those attempts as the JTR requires. Nevertheless, the agency should have recognized the confusion and requested a more substantive statement.

Although the owner seemed open to the possibility of a sublease, the conditions he placed on his consent made this option infeasible. Finding an acceptable tenant prior to his departure while completing the required tasks of cleaning, packing, disconnecting utilities and other accounts, and moving was not reasonable under the circumstances—a conclusion that both the owner and claimant reached, and in doing so, took subleasing off the table in favor of a cost settlement.

The JTR and the FTR expect an employee to avoid or mitigate costs where possible, such as “by sublease or other arrangement.” While claimant was not able to avoid all \$4400 of the remaining rent, he was able to avoid almost half of it by negotiating a settlement of \$2250. In the Board’s view, claimant acted reasonably under the circumstances by avoiding half the costs, while meeting the Government’s tight time line for relocation. Had he been relocating at personal expense within the same thirty-day time frame, 3500 miles away, the \$2250 would not have been avoidable.

The agency cites *Angela Brown*, GSBICA 16523-RELO, 05-1 BCA ¶ 32,815 (2004) to support its denial of the claim. The Board does not find that case controlling with regard to the instant claim. In that case, the claimant made no attempts to avoid costs associated with her unexpired lease, and the owner refused to release her from its terms since her former roommate continued to occupy the apartment until expiration of the lease. We also note that where that case specifically mentions “subleasing” as a means of avoiding costs, it is preceded by the phrase “for example.” For these reasons, the agency’s reliance on this case is misplaced.

The Board agrees with the agency’s decision that the \$385 cleaning fee should not be reimbursed. That fee represents an avoidable expense which claimant incurred for his own convenience.

Decision

The claim for rent settlement expenses of \$2250 is granted. The claim for the \$385 cleaning fee is denied.

KATHLEEN J. O’ROURKE
Board Judge