



UNITED STATES  
CIVILIAN BOARD OF CONTRACT APPEALS

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February 29, 2016

CBCA 4825-RELO

In the Matter of SYBIL L. BROOKS-DUPREE

Sybil L. Brooks-Dupree, APO Area Pacific, Claimant.

Steve Lundy, Civilian Personnel Officer, Pacific Air Forces, Department of the Air Force, APO Area Pacific, appearing for Department of the Air Force.

**VERGILIO**, Board Judge.

Lease termination expenses are not precluded simply because the claimant sought a transfer to an overseas position by applying for a job opening.

The claimant, Sybil L. Brooks-Dupree, a civilian employee of the United States Air Force, seeks review of a determination to deny lease termination expenses as part of a foreign transfer allowance (FTA). With a reporting date of April 22, 2015, the claimant transferred from the continental United States (CONUS) to outside CONUS (OCONUS). The claimant was competitively selected for the job in response to an application she submitted in response to an opening identified on USAJOBS.

Statute specifies that a transfer allowance may be granted for relocation expenses, including unavoidable lease penalties, incurred by an employee. 5 U.S.C. § 5924(2) (2012). The applicable (those in effect on the date of reporting to the new duty station) implementing regulations, the Department of State Standardized Regulations (DSSR), dictate that such amounts are to assist an employee “due to [a] transfer required by a Federal agency[.]” DSSR 241.2.d., and may be reimbursed only after an appropriate authorizing official of the employing agency certifies in writing that:

- a. the employee's transfer to a foreign post of assignment was due solely to actions by the employing agency and to unusual conditions fully beyond the control of the employee; and
- b. the termination of the lease and departure of the employee did not result from any specific actions by the employee to seek a curtailment of the assignment for transfer or promotion . . . .

DSSR 242.4. The importance of such a determination and certification relating to lease penalty expenses is further emphasized on a Department of State foreign transfer allowance form, DS-240, in which paragraph 6 reiterates the requirements and has a line for the authorizing official's signature and a date. The certifying official here concluded that these conditions were not satisfied given that the employee sought the transfer, which was not required or imposed by the agency.

Subsequent to the determination of the certifying official, while this case was pending, this Board addressed a similar situation in *James R. Dikeman*, CBCA 4238-RELO, 16-1 BCA ¶ 36,200 (2015), and determined that the employee's seeking a transfer to an advertised position does not preclude the recovery of lease breaking expenses. Based upon that decision, to preclude such recovery the DSSR and implementing materials would have to specify that recovery is precluded in the given circumstance.

Because of the precedent, the employee is entitled to recover substantiated lease breaking expenses as permitted. The Board grants the claim. The agency is to make the necessary analysis, calculations, and payment.

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JOSEPH A. VERGILIO  
Board Judge