



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

August 29, 2007

CBCA 691-RELO

In the Matter of ALLAN E. McLAUGHLIN

Allan E. McLaughlin, Saint Marys, GA, Claimant.

Lori Brock, Supervisor, Travel Section, Financial Services Center, Department of Veterans Affairs, Austin, TX, appearing for Department of Veterans Affairs.

DRUMMOND, Board Judge.

In this matter claimant, Dr. Allan McLaughlin, seeks real estate transaction expenses for the sale of his home in Mentor, Ohio, near his old duty station. The Department of Veterans Affairs (VA or agency), through the Financial Services Center (F.C.), determined that the Mentor home did not qualify as his residence entitling him to reimbursement for real estate expenses associated with its sale. The reason was that claimant did not commute daily from that residence to his old duty station. The agency, through the F.C., forwarded the claim to the Board for decision. We sustain the decision of the agency, as it correctly applied the provisions of statute and the Federal Travel Regulation (FTR).

In December 2004, claimant, an employee of the VA, accepted a permanent change of station (PCS) from Lorain, Ohio, to Gainesville, Florida. While claimant worked in Lorain, he owned a house in Mentor, Ohio, which according to Mapquest data supplied by the agency, is 49.99 miles away from Lorain. Claimant's wife and daughter lived in the house in Mentor. Claimant, however, rented an apartment in Sheffield Lake, Ohio, which is approximately 6.36 miles away from Lorain, and drove to work from there on some days.

The agency states that claimant listed the Sheffield Lake address on a form 3918 which he signed on November 29, 2004, and during his PCS move counseling on December 3, 2004, he added “#301” to the Sheffield Lake address. Documentation in the record indicates that household goods weighing 6500 pounds were moved from the Sheffield Lake address. The record contains no documentation showing that household goods were moved from the Mentor address.

The agency states further that it informed claimant prior to his move that there may be a problem in reimbursing him for real estate expenses associated with the future sale of his home because claimant lived in the apartment in Sheffield Lake. Documentation in the record supports the agency’s statement.

Claimant sold his house in Mentor in October 2006 and submitted a voucher for the costs incurred in the sale. An agency document dated March 7, 2007, states that the net to which claimant was entitled was \$0.00, after suspending \$10,319.25, the entire amount claimed. That document states further that the costs were not allowable because claimant did not commute daily from that residence to his old duty station.

Discussion

When an employee transfers in the interest of the Government from one official station to another for permanent duty, the agency is to reimburse the employee for expenses of the sale of the employee’s residence at the old official station. 5 U.S.C. § 5724a(d) (2000). Under the FTR, which implements this statutory provision, to qualify for reimbursement, this residence must be the one “from which [the employee] regularly commuted] to and from work on a daily basis and which was [the employee’s] residence at the time [he or she was] officially notified by competent authority to transfer to a new official station.” 41 CFR 302-11.100 (2004).

The wording of the FTR applicable at the time of claimant’s transfer plainly requires that the employee commute from the residence “on a daily basis” in order to be entitled to reimbursement for expenses incurred in the sale. This regulation, therefore, does not permit the Government to reimburse employees for the sale of a home from which the employee was not actually commuting regularly on a daily basis. *Uta Acker*, GSBCA 16619-RELO, 05-2 BCA ¶ 32,999; *William T. Orders*, GSBCA 16095-RELO, 03-2 BCA ¶ 32,389; *David Morrell*, GSBCA 15229-RELO, 00-1 BCA ¶ 30,899; *Ezzat Asaad*, GSBCA 14484-RELO, 98-1 BCA ¶ 29,667.

Claimant asserts that he lived at his home in Mentor, Ohio, more than at his apartment. Claimant states that he “utilized [the] apartment two-three nights per week depending upon [his] . . . level of fatigue and . . . [weather conditions].” However, claimant’s description of his commuting schedule is clear that he did not commute daily to work from his home in Mentor.

Claimant claims that he accepted the transfer based upon the fact that he would receive financial support for moving household goods and selling his house. He alleges that the F.C. never informed him that “picking up household goods from the apartment in Sheffield Lake, Ohio would ever preclude or jeopardize the support for the sale of his home.” These facts, even if true, do not overcome the requirement that he must commute daily from his residence in Mentor to be reimbursed costs for its sale. *Wayne A. Wetzel*, GSBICA 16017-RELO, 03-1 BCA ¶ 32,224; *Albert R. Wilcox*, GSBICA 15776-RELO, 02-2 BCA ¶ 31,864.

Claimant alleges that he did not “act in bad faith” or “intend to deceive anyone.” We accept claimant’s statement in this regard, but nonetheless, the Government may not reimburse claimant for such costs, as he did not commute from the home on a daily basis. *Richard S. Citron*, GSBICA 15166-RELO, 00-1 BCA ¶ 30,788; *Morrell; Asaad*.

Decision

The agency was correct in declining to reimburse claimant for the disputed expenses.

JEROME M. DRUMMOND
Board Judge