



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

June 25, 2008

CBCA 1097-RELO

In the Matter of STUART L. SUMNER

Stuart L. Sumner, APO Area Europe, Claimant.

Tony Whitehouse, Assistant Deputy Chief of Staff, G1 (Civilian Personnel), United States Army, Europe, and Seventh Army Unit 29351, APO Area Europe, appearing for Department of the Army.

DANIELS, Board Judge (Chairman).

The Department of the Army transferred Stuart L. Sumner from New York to Germany in April 2007. Shortly before moving abroad, Mr. Sumner traveled to Florida to visit his mother, his adult son, and his dependent daughter. He then returned to his home in New Jersey before traveling overseas. Mr. Sumner believes that he is entitled to a foreign transfer allowance (FTA) -- in particular, the predeparture subsistence expense portion of that allowance -- to cover the costs he incurred for lodging and meals and incidental expenses while in Florida. The Army disagrees.

Statute permits the Government to grant various cost of living allowances to employees in foreign areas. Among these allowances is “[a] transfer allowance for extraordinary, necessary, and reasonable subsistence and other relocation expenses . . . , not otherwise compensated for, incurred by an employee . . . in the United States . . . prior to departure for a post of assignment in a foreign area.” 5 U.S.C. § 5924(2)(A) (2000). The President has delegated to the Secretary of State authority to issue regulations which implement statutes providing for overseas pay differentials and allowances, including the FTA. Exec. Order No. 10,903 (1961), *reprinted as amended in* 5 U.S.C. § 5921; *see Gregory J. Bird*, GSBKA 16110-RELO, 04-1 BCA ¶ 32,425 (2003); *Okyon Kim Ybarra*, GSBKA 15407-RELO, 01-1 BCA ¶ 31,334. Pursuant to this authority, the Secretary has

issued the Department of State Standardized Regulations (DSSR). The Department of Defense's Joint Travel Regulations (JTR) expressly incorporate the provisions of the DSSR regarding the FTA, including the portion regarding predeparture subsistence expenses. JTR C1004.

The DSSR provide that the predeparture subsistence expense portion of the FTA is “applicable to lodging, meals (including tips), laundry, cleaning and pressing expenses in temporary quarters for employee and each member of family for up to 10 days before final departure from a post in the United States to a post in a foreign area, beginning not more than 30 days after they have vacated residence quarters.” DSSR 241.2(c).

As this statement makes clear, the vacating of residence quarters is a prerequisite to eligibility for the predeparture subsistence expense portion of the FTA. *Michael A. MacInerney*, GSBCA 16309-RELO, 04-1 BCA ¶ 32,613. “Vacating,” in this context, is not restricted to complete abandonment of a residence; a home is constructively vacated when it is no longer suitable for permanent occupancy due to the unavailability of all or essential items of an employee's household goods. *Gordon D. Giffin*, GSBCA 14425-RELO, 98-2 BCA ¶ 30,100; *see also Randall O. Peaugh*, GSBCA 16032-RELO, 03-2 BCA ¶ 32,313 (citing cases involving unavailability of essential furniture). Thus, it is clear that an employee is eligible for the allowance in question only once he has abandoned his residence or the residence is no longer fit for permanent occupancy.

Mr. Sumner maintains that he qualified for the allowance because he vacated his home in New Jersey when he traveled to Florida. The Army counters that the employee vacated the residence only in the sense that anyone vacates his home when he is away from it. Actually, the Army asserts, and Mr. Sumner concedes, the employee's wife continued to live in the house while he was in Florida and for many months thereafter; she did not move to Germany until January 2008. We conclude, based on this evidence, that Mr. Sumner did not qualify for the predeparture subsistence expense portion of the FTA because, at the time he made the trip in question, he had not abandoned his New Jersey residence and that residence was fit for permanent occupancy. We may applaud Mr. Sumner's decision to travel to Florida, just before he moved to Germany, as the act of a dutiful son and father. We do not believe, however, that under pertinent regulations, the Government should have paid for the subsistence expenses he incurred while on that trip.

STEPHEN M. DANIELS
Board Judge