



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

June 24, 2010

CBCA 1923-RELO

In the Matter of BETSAIDA RAMIREZ

Betsaida Ramirez, Portland, ME, Claimant.

Erin R. Guiffre, Office of the General Counsel, Social Security Administration, Baltimore, MD, appearing for Social Security Administration.

DANIELS, Board Judge (Chairman).

The Social Security Administration (SSA) transferred Betsaida Ramirez from Washington State to Maine in August 2009. The move did not go as smoothly as Ms. Ramirez expected. In filing this case with the Board, she asked that we direct SSA to (a) extend her eligibility for temporary quarters subsistence expenses (TQSE) beyond the 120 days the agency allowed and (b) reimburse her for the cost of renting a car in Maine for more than a month. In responding to SSA's comments, Ms. Ramirez has reiterated the initial request and additionally said that she "want[s] [her] record cleared and the suspension removed and [her] week's salary reinstated" and "want[s] to [sic] somebody to acknowledge that this program [making use of a relocation services contractor] doesn't work as great as they pawn it off as, I want an apology, I want someone to say they are sorry and they were wrong."

We deny the claims for TQSE and the cost of the rental car. We have no authority to consider the additional requests.

Background

Before Ms. Ramirez left Washington State, SSA provided her with a relocation manual prepared by the agency, and SSA's relocation services contractor, Prudential Relocation, Inc., provided her with its own "Transferring Employee Guide." Both of these manuals contained cautions about some of the sorts of situations she might -- and eventually did -- encounter. Each manual noted that the maximum length of time for which an employee could be eligible was 120 days. The Prudential guide also warned about the predicament facing sellers of houses:

[T]he real estate markets are readjusting to serious dislocations that occurred in 2008. Home prices are falling, properties are staying on the market longer, and inventories of existing and new-construction homes are at the highest level in years. This makes selling a home daunting, at best.

This manual also told her that Prudential would buy her home, if she wished, but that:

The appraised value offer that Prudential presents -- commonly termed the "buy-out" offer -- may be substantially lower than sales offers you may receive by listing your home. That is because offers from interested buyers who may form an emotional attachment to your home are usually your best chance at attaining top dollar for your home. Prudential's buy-out offer originates from an analysis of comparable homes, but it is also adjusted by many elements including the property's marketing challenges and market forecasts as well as property defects that are uncovered during the inspection process.

With regard to selling the house to Prudential, the SSA manual warned:

You Always Have An Alternative: If you are not happy with your buy-out offer, terminate the home sale program (SSA will absorb the costs of the program), sell the home on your own, and submit a claim for your expenses as outlined under the previous section "Selling Your Home On Your Own."

Ms. Ramirez decided to place the sale of her Washington home in Prudential's hands. The home did not sell as quickly as she would have preferred, however. On September 9, Prudential offered to purchase it at a price which was the average of three appraised valuations. Five weeks later, in mid-October, she and her husband accepted this offer. Settlement occurred in early November. Shortly thereafter, Prudential received an offer from a third party to buy the house, and Prudential sold it to that party. The sales price was 5%

more than Prudential had paid Ms. Ramirez and her husband -- but 16% less than their original asking price and 7% less than their final asking price.

Meanwhile, Ms. Ramirez and her husband entered into a contract to buy a house in Maine, contingent on their securing financing. At that time, the house in Washington had not yet been sold. The Ramirezes were told that they were denied financing because their debt-to-income ratio was excessive. Ultimately, they purchased a house in Maine in January 2010. More than 120 days passed between Ms. Ramirez' arrival in Maine and the date on which she and her family moved into their new house. SSA paid her for 120 days of TQSE. The agency refused to pay for any additional days, though it recognizes that the family resided in temporary quarters for that extra time.

Ms. Ramirez traveled from Washington to Maine by air. SSA shipped her car from one state to the other. While she was waiting for the car to arrive, she rented a vehicle which she used for local transportation. She paid for the rental, and the agency has refused to reimburse her for it.

In May 2010, SSA suspended Ms. Ramirez for five calendar days as a result of her failure to pay in a timely fashion a balance owed on her government-issued credit card.

Discussion

The two issues Ms. Ramirez initially raised are resolved easily by reference to statute and regulation. Both 5 U.S.C. § 5724a(c) (2006) and 41 CFR 302-6.104 (2009) limit the length of time of eligibility for TQSE to 120 days. The statute also says that "compelling reasons for the continued occupancy of temporary quarters" -- Ms. Ramirez' justification for additional time -- are necessary to extend the period of eligibility beyond sixty days. 5 U.S.C. § 5724a(c)(2). The regulation emphasizes that "[u]nder no circumstances may [an employee] be authorized reimbursement for actual TQSE for more than a total of 120 consecutive days." 41 CFR 302-6.104. Even if SSA wanted to extend Ms. Ramirez' eligibility, it could not do so.

Similarly, regulation prohibits SSA from paying for Ms. Ramirez' rental car. Local transportation expenses incurred by a transferred employee may not be reimbursed by an agency unless they pertain to the performance of official business. 41 CFR 302-6.18. Ms. Ramirez says that she used the rental car not for the performance of official business, but rather, to commute to and from work, and to drive her daughter to and from school. We have no doubt that Ms. Ramirez needed local transportation in Maine before her vehicle arrived from Washington, and renting a car may well have been the most economical way to secure that transportation (as Ms. Ramirez alleges). Regardless, however, reimbursement of the cost

of renting a car is not one of the benefits provided by the Federal Government to employees it transfers from one duty station to another. This point has been enunciated in many decisions, including the following which are cited by SSA: *Roylinne Wada*, GSBCA 16380-RELO, 04-1 BCA ¶ 32,622; *Patrick O. Walsh*, GSBCA 16243-RELO, 04-1 BCA ¶ 32,520 (2003); *Michael L. Noll*, GSBCA 15136-RELO, 00-1 BCA ¶ 30,887; *Jacqueline Williams*, GSBCA 15026-RELO, 99-2 BCA ¶ 30,538; and *Carrie L. McWilliams*, GSBCA 15028-RELO, 99-2 BCA ¶ 30,497. Though the point may not have been stated in SSA's relocation manual, the law is clear.

Ms. Ramirez is disappointed, with regard to these matters and others that arose in her move across the country, because she "believe[d] your agency will take care of one of their own," and SSA did not do so according to her standards. Her story should be a cautionary tale for others: Agencies absorb some of the costs employees incur in moving -- but only those costs that they are required, or agree as authorized, to absorb. Moving is expensive, and although many relocation benefits are provided by statute and regulation, some costs will inevitably be borne by employees.

We can go no further in addressing Ms. Ramirez' requests. The Board is authorized to settle claims by federal civilian employees involving expenses incurred for official travel and transportation, and for relocation expenses incident to transfers of official duty station. 31 U.S.C. § 3702(a)(3). We have no authority to investigate whether a relocation services contractor performed its duties efficiently and politely, or to determine whether the relocation services program is working well. Thus, we do not opine on whether Prudential or Ms. Ramirez is correct in alleging that the other behaved badly while the former was engaged to sell the latter's house in Washington. We can only note that the contractor cautioned the employee that selling her house could be difficult and its buy-out offer might not be for as much money as a direct sale would obtain, and that despite the agency's advice that the employee was under no obligation to accept such an offer, the employee accepted it.

We have no authority, either, to investigate whether SSA fairly suspended Ms. Ramirez for failing to pay in a timely fashion a balance owed on her government-issued credit card, and we cannot direct the agency to pay her the five days' salary it withheld. We make no findings as to whether, as to the transaction involving the house in Washington or the suspension, SSA or its contractor did anything wrong or ought to make an apology.

STEPHEN M. DANIELS
Board Judge