



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

July 20, 2017

CBCA 5691-RELO

In the Matter of BRIAN D. HUTCHISON

Brian D. Hutchison, San Antonio, TX, Claimant.

James E. Hicks, Office of Chief Counsel, Drug Enforcement Administration, Department of Justice, Springfield, VA, appearing for the Department of Justice.

SHERIDAN, Board Judge.

Claimant, Brian D. Hutchison, requests that the Drug Enforcement Administration (DEA) be directed to pay him \$15,631.31 for the real estate expenses he incurred in the sale of his house in Midland, Texas, on August 26, 2016. The agency denied the claim because the claimant executed the sale of the Midland house before the notification of his permanent change of station (PCS) transfer, contrary to the requirements of the Federal Travel Regulation (FTR). The Board finds that the agency correctly denied reimbursement of real estate transaction expenses associated with the sale of the house because the claimant entered into the residential contract for the sale of the house before receiving the transfer notice.

Background

Claimant is a special agent working with the DEA. Prior to his PCS, claimant lived in Midland, Texas, and worked at the DEA El Paso Division. On July 12, 2016, claimant entered into a contract to sell the Midland house. On August 25, 2016, the DEA informed claimant of his selection for transfer to the DEA Houston Division in San Antonio, Texas. The next day, August 26, claimant closed on the sale of his house in Midland.

On November 28, 2016, claimant submitted a voucher claiming \$15,631.31 as reimbursable residential transaction expenses. The DEA requested written proof on December 21, 2016, of the earliest date that claimant became aware that he was to be

transferred to a new duty station. Claimant responded on December 27, 2016, with a copy of the August 25, 2016 notice of the transfer. On January 25, 2017, the Financial Policy and Controls Unit (FNIP) denied reimbursement and informed claimant of his right to appeal to the Board. The FNIP concluded that the real estate transaction costs were not incident to the transfer and not reimbursable under DEA policy, which requires that a relocation cost be incident to an official transfer and incurred after the agency gave notice of the transfer.

Discussion

On March 23, 2017, claimant filed a claim with the Board seeking \$15,631.31. The claim cites a number of provisions from the Federal Travel Regulation (FTR), specifically 41 CFR 302-1.1(b), 302-11.2, 302-11.5, and 302-11.100 (2016). Claimant argues that the nature of his living situation in the Midland house fulfills the requirements laid out in those provisions. Claimant additionally points out that the DEA's PCS Domestic Relocation Handbook states that in situations where DEA policy conflicts with the FTR, the FTR takes precedence and that "the employee's interest in the property must have been acquired prior to the date the employee was first officially notified of his/her transfer to the new official station." Claimant avers that while this line specifically requires the employee's interest to have been acquired before the notification, it does not state that the interest must have been "held when the official travel orders are received."

The Government is generally required by statute to reimburse the expenses associated with an agency transferring an employee from one duty station to another in the interest of the Government, including the relocation costs associated with the sale of a residence at the old official duty station:

Under regulations prescribed under section 5738 [of title 5, United States Code], an agency shall pay to or on behalf of an employee who transfers in the interest of the Government, expenses of the sale of the residence . . . of the employee at the old official station and purchase of a residence at the new official station that are required to be paid by the employee, when the old and the new official stations are located in the United States.

5 U.S.C. § 5724a(d)(1) (2012).

The general rule is that for a relocation expense to be reimbursable, it must be incident to the transfer and therefore must have been incurred after the employee's receipt of the formal notification of the transfer. *See Tyler D. Warner*, CBCA 5215-RELO, 16-1 BCA ¶ 36,364, at 177,258; *Byron L. Wells*, CBCA 1206-RELO, 08-2 BCA ¶ 33,979, at 168,064; *Joseph Bush*, CBCA 660-RELO, 07-1 BCA ¶ 33,560, at 166,225. Employee costs incurred

before the agency manifests an intent to transfer the employee are considered to have been incurred for a reason other than the transfer and thus not incident to the transfer. *Joseph Bush*, 07-1 BCA at 166,226. Mere anticipation of a transfer is not sufficient to make the sale incident to the transfer. *Id.*

Claimant posits that the DEA PCS Domestic Relocation Handbook does not explicitly prohibit employees from losing interest in property prior to the notification of transfer. However, the Handbook does not dictate the requirements for reimbursement. The FTR and Board case precedent direct that the sale of property must be incident to and therefore following the transfer notice. Moreover, real estate expenses are incurred when the house sale contract is signed, not when closing occurs. 41 CFR 302-11.2(a); *Robert M. Baum*, CBCA 5600-RELO, 17-1 BCA ¶ 36,637; *Tyler D. Warner*, 16-1 BCA at 177,258; *Byron L. Wells*, 08-2 BCA at 168,064; *Joseph Bush*, 07-1 BCA at 166,225. Claimant can not recover because he entered into the contract on July 12, 2016, when he signed the sale contract, which was before he received the official notice of transfer on August 25, 2016.

The agency correctly denied reimbursement of real estate expenses associated with the sale. The claimant incurred those expenses before he received the official notice of transfer; therefore, the expenses were not incident to the transfer and not reimbursable.

Decision

The claim is denied.

PATRICIA J. SHERIDAN
Board Judge