UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

February 28, 2017

CBCA 5413-RELO

In the Matter of RICHARD B. PIERCY

Richard B. Piercy, Gainesville, VA, Claimant.

Michael E. Sainsbury and William J. Bailey, Jr., Office of General Counsel, Defense Contract Management Agency, Fort Lee, VA, appearing for Defense Contract Management Agency.

ZISCHKAU, Board Judge.

Richard B. Piercy, the claimant, seeks reconsideration of our decision in *Richard B. Piercy*, CBCA 5413-RELO, 16-1 BCA ¶ 36,550, denying his claim for reimbursement of real estate expenses in connection with the 2010 sale of his Tennessee home because we concluded that 5 U.S.C. § 5724a(d)(3) prohibits reimbursement for those expenses. Mr. Piercy states that the Board should reconsider the decision because: (1) he had no return rights to his Department of the Air Force duty station at Arnold Air Force Base (AFB) when he transferred to the United States Army Southern European Task Force (SETAF) in Vicenza, Italy, pursuant to permanent change of station (PCS) orders; and (2) the Joint Travel Regulations (JTR) provide that residence sale expenses are reimbursable at the permanent duty station (PDS) from which the employee was transferred "when assigned" to a foreign area PDS. Neither of the grounds raised by Mr. Piercy is a valid basis for reconsidering our decision. Accordingly, we deny the request for reconsideration.

Mr. Piercy was originally stationed at Arnold AFB, Tennessee. In 2010, Mr. Piercy entered into a rotation agreement transferring him to SETAF in Italy. Thereafter, Mr. Piercy sold his home in Tennessee. In 2013, Mr. Piercy accepted a transfer to the Defense Contract Management Agency (DCMA) in Manassas, Virginia.

On reconsideration, Mr. Piercy continues to argue that his 2010 rotation agreement, which did not provide for return rights to Arnold AFB, consistent with Air Force policy at

the time not to grant return rights to employees who transfer to foreign postings of other Department of Defense (DoD) components, must be deemed official notification that he would not be returning to his former location in Tennessee.

The controlling statute, 5 U.S.C. § 5724a(d)(3), provides that "[r]eimbursement of [real estate transaction expenses] shall not be allowed for any sale . . . that occurs prior to official notification that the employee's return to the United States would be to an official station other than the official station from which the employee was transferred when assigned to the post of duty outside the United States." In the underlying decision, we concluded that the absence of return rights in his 2010 rotation agreement did not constitute the "official notification" required under 5 U.S.C. § 5724a(d)(3) to allow reimbursement for the 2010 sale of his prior residence. *E.g.*, *Robert J. Wright*, GSBCA 15399-RELO, 01-1 BCA ¶ 31,368, at 154,902 (no official notification where employee's return rights were canceled in anticipation of base closure); *Harry T. Teraoka*, GSBCA 13641-RELO, 97-1 BCA ¶ 28,796, at 143,641 (no official notification when an employee was transferred from Hawaii to Germany without return rights). Neither the Air Force nor the Army provided Mr. Piercy with any official notification in 2010 that he would be assigned anywhere else after his rotation in Italy. Mr. Piercy's first official notification that he would be assigned to a location other than Tennessee came in 2013, three years after he sold his Tennessee home, when he accepted a position with DCMA and received orders to report to Manassas, Virginia. We have carefully considered the arguments and the 2017 email message submitted by Mr. Piercy on reconsideration, but they do not change our conclusion based on the language of 5 U.S.C. § 5724a(d)(3), the numerous decisions interpreting the statute, and common sense.

Mr. Piercy makes a new argument on reconsideration, that the JTR supports the reimbursement of his expenses from the 2010 sale of his home. He quotes JTR language providing that "[e]xpenses incurred incident to the following transactions are reimbursable: a. Residence sale . . . at the PDS from which the employee was transferred when assigned to a foreign area PDS." JTR C5750-D.4.a (June 2010). However, Mr. Piercy neglects subsection D.5 ("Limitations") which states that: "Expenses incident to a sale . . . that occurs prior to the employee being officially notified (ordinarily in the form of a PCS travel order) that instead of returning to the former CONUS [continental United States]/non-foreign OCONUS [outside CONUS] area PDS, reassignment/transfer is to a different CONUS/non-foreign OCONUS area PDS and may not be reimbursed." This limitation is taken from 5 U.S.C. § 5724a(d)(3), discussed above, which prohibits DCMA from reimbursing Mr. Piercy's 2010 sale expenses when DCMA provided Mr. Piercy in 2013 the first official notification that he would be transferred to a PDS location other than his prior station in Tennessee.

Mr. Piercy's request for reconsideration is denied.

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JONATHAN D. ZISCHKAU
Board Judge