



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

August 28, 2018

CBCA 6006-RELO

In the Matter of KELLI A. BAUMGARTNER

Kelli A. Baumgartner, Wright-Patterson Air Force Base, OH, Claimant.

Jeffrey J. Svoboda, Chief, Relocation Division, Air Force Financial Services Center, Department of the Air Force, Ellsworth Air Force Base, SD, appearing for Department of the Air Force.

DRUMMOND, Board Judge.

Claimant, Kelli A. Baumgartner, a civilian employee of the Department of the Air Force, seeks review of the agency's decision denying her request for reimbursement of real estate expenses incurred for the sale of her residence, in connection with her permanent change of station (PCS) transfer from Washington, DC, to Dayton, Ohio. For the reasons explained below, the claim is granted.

Prior to her relocation to Ohio, Ms. Baumgartner was employed by the Department of the Navy in its Research Laboratory located in Washington, DC. Her residence at that time was located in Alexandria, Virginia. Sometime in 2016 claimant came under consideration for employment with the Department of the Air Force's Research Laboratory in Dayton, Ohio.

On December 19, 2016, Ms. Baumgartner received a verbal offer of employment from the Air Force, which she accepted. Subsequently, on December 23, 2016, Ms. Baumgartner received an email message from the Research Laboratory's Director of the Electro-Optic Countermeasures Branch welcoming her to his team. On January 4, 2017, Ms. Baumgartner received another email from the Branch Director informing her that the Air Force was moving forward with her hiring package. The email also advised her to anticipate

a start date sometime in “early or mid [April]” and explained that she would be entitled to transfer benefits.

In reliance on the email, Ms. Baumgartner placed her house on the market on January 4, 2017, and accepted a sales contract from a buyer for her home that same day. The sale of her home in Virginia was completed on February 28, 2017.

On May 5, 2017, she signed a service agreement whereby she promised to remain in Government service for at least twelve months after the transfer. On June 9, 2017, the Air Force issued official PCS orders to Ms. Baumgartner. The orders authorized relocation benefits, including reimbursement of expenses incurred in selling her old residence in Alexandria, and required her to report to her new duty station on June 28, 2017.

Ms. Baumgartner subsequently submitted a claim for reimbursement of \$26,716.25 in real estate expenses associated with the sale of her residence in Virginia. The agency denied Ms. Baumgartner’s claim, indicating that, although her orders authorized reimbursement of residence transaction expenses, she was not entitled to reimbursement because she incurred these expenses prior to signing the service agreement and the issuance of her PCS orders. Ms. Baumgartner appeals the Air Force’s denial of her claim.

Discussion

The Government is required to reimburse federal employees for real estate expenses incurred that are incident to a transfer of station made in the Government’s interest. 5 U.S.C. § 5724a(d)(1) (2016); *Milton Brown*, CBCA 4998-RELO, 16-1 BCA ¶ 36,205 (2015). When an employee incurs real estate expenses prior to receiving formal notification of a pending transfer, the employee will be eligible for reimbursement only if the agency had manifested a clear “administrative intent” to transfer the employee.¹ Joint Travel Regulations (JTR), JTR 5500-D; *Brandon J. Thorpe*, CBCA 2103-RELO, 11-1 BCA ¶ 34,687, at 170,847 (citing

¹ Whether Ms. Baumgartner incurred the claimed cost before signing the service agreement is irrelevant. Although payment of relocation benefits may not be made unless an employee has signed a service agreement, neither statute nor regulation precludes payment of an otherwise valid claim merely because the expense in question was incurred before the agreement was signed. 41 CFR 302-11.2, -11.3 (2016). In *Regina V. Taylor*, GSBCA 13650-RELO, 97-2 BCA ¶ 29, 089, the GSBCA, whose decisions we have adopted as precedent, observed that the absence of signed service agreement is not fatal to a claim for relocation allowances so long as the employee has remained in Government service for the required length of time. *See also* Thomas D. Mulder, 65 Comp. Gen. 900 (1986); Baltazar A. Villarreal, B-214244 (May 22, 1984). Ms. Baumgartner has completed more than the necessary amount of time in service.

Dennis A. Edwards, GSBCA 14943-RELO, 00-1 BCA ¶ 30,741 (1999); *Warren A. White*, B-235046 (Sept. 18, 1989). “The rationale for this rule is that, if the transfer does not materialize, either the employee or the Government may ‘lose money for no purpose.’” *Jorge L. Gonzalez*, CBCA 984-RELO, 08-2 BCA ¶ 34,004, at 168,162 (citing *Connie F. Green*, GSBCA 15301-RELO, 01-1 BCA ¶ 31,175, at 153,998 (2000)). Travel orders are not the sole indication of the agency’s intent, and reimbursement will be provided, so long as “a definite selection for the position has been made and all parties concerned had good reason to expect the transfer would be approved and effectuated.” *Id.* It has been recognized that even telephone contacts in which a definite offer is made, though contingent upon higher level approvals, may be sufficient to establish the requisite “administrative intent.” *Thorpe*, 11-1 BCA at 170,847, and the cases cited therein.

Ms. Baumgartner entered into the contract to sell her house on January 4, 2017, and, as such, that is the date that is used to evaluate eligibility for cost incurred at closing. See *Brandon J. Thorpe*, CBCA 2103-RELO, 11-1 BCA ¶ 34,687, at 170,847 (citing *Bernard J. Silbert*, B-202386 (Sept. 8, 1981)). Here, the evidence shows the existence of an administrative intent to transfer Ms. Baumgartner at the time she entered into the contract under which she became obligated to sell her residence in Virginia. The email from the Air Force on January 4, 2017, is written notification that she had been selected for a position and approved to make the move to Dayton. The Air Force has not refuted Ms. Baumgartner’s assertion that the agency offered her a position, which she accepted, nor has it rebutted Ms. Baumgartner’s documentary evidence that reveals the requisite administrative intent to effect the transfer existed on January 4, 2017, the date that she incurred the claimed costs. Accordingly, we find the evidence here renders the Air Force’s intent with respect to Ms. Baumgartner’s transfer clear and unmistakable. The real estate expenses Ms. Baumgartner incurred were clearly incident to her transfer.

Decision

The claim is granted. Ms. Baumgartner should be paid the allowable expense of selling her home at her old duty station.

Jerome M. Drummond

JEROME M. DRUMMOND

Board Judge