



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

July 14, 2021

CBCA 7111-RELO

In the Matter of JAMES D.

James D., Claimant.

No appearance for Department of Defense.

CHADWICK, Board Judge.

Claimant seeks reimbursement of a “transfer fee” of \$739.50 that he incurred in connection with terminating a lease when the agency transferred him from one city in the continental United States to another. The agency denied the claim on the grounds that the fee “is not a reimbursable expense per the Joint Travel Regulation[s]” (JTR). The agency then elected not to file a response with the Board after claimant sought our review.* We do not endorse the agency’s statement that such a transfer fee is categorically not reimbursable as an expense associated with ending a lease, but we deny the claim in the absence of evidence that claimant made efforts to avoid paying this particular fee.

The regulations applicable to expenses associated with unexpired leases remain substantially the same as when we discussed them in *Paul T. Burns*, CBCA 4958-RELO, 16-1 BCA ¶ 36,365. The Federal Travel Regulation and the JTR require an employee seeking reimbursement to show that charges for an unexpired lease “[could not] be avoided by sublease or other arrangement.” 41 CFR 302-11.7(b) (2020); *see* JTR 054507-A.2 (Oct. 2020). Claimant’s submission indicates that he successfully avoided paying “liquidated

* The Board emailed a docketing notice in April 2021 to Mindy Graber, who the record shows is a certifying officer in the travel office of the National Security Agency at Fort Meade, Maryland. We wrote again to Ms. Graber in early June 2021 asking whether the agency would file a response to the claim. We received no responses.

damages” for ending his lease early, but he did not avoid paying the transfer fee. Specifically, claimant avoided paying liquidated damages of \$2958 by moving to a rental community in his new duty location that is managed by the same company from which he leased at his last duty location, incurring only the transfer fee under the terms of the lease. Claimant argues that his decision to “transfer” between the communities “saved the Government \$2,218.50,” the difference between the liquidated damages and the transfer fee.

The test under the regulations, however, is not whether the employee achieved some sort of savings. We have found entitlement where employees provided evidence that they attempted without success to avoid expenses of ending a lease, as in *Paul T. Burns*, and where we determined that a “lease specifically prohibit[ed] subleasing.” *Joshua C. Stuckey*, CBCA 1341-RELO, 09-2 BCA ¶ 34,151 (“[P]er the lease, Mr. Stuckey could not terminate the lease and remained obligated for payment of the rent thereunder.”); see *J. Daniel Beaty*, GSBGA 13713-RELO, 97-1 BCA ¶ 28,931. The record here does not support either of those rationales. Paragraph 11 of claimant’s lease, titled, “Assignment and Subletting,” was both restrictive and permissive. It stated that claimant could not “assign, sublet,” or otherwise transfer the lease “without the Owner’s prior written consent.” Subparagraph 11.b of the lease specifically explained how to request such consent.

We invited claimant to supplement the record to show, if possible, that he explored with the owner under lease subparagraph 11.b the possibility of subletting his residence or otherwise transferring his remaining obligations under the lease without fee or penalty. Claimant did not respond within the four weeks we allowed. As a result, we lack any basis to find that claimant tried and failed to avoid paying the transfer fee, the only expense at issue here, when he arranged to enter into a new lease. “An employee who makes no . . . effort” to avoid an expense under an unexpired lease “does not meet the requirements for being reimbursed.” *Angela Brown*, GSBGA 16523-RELO, 05-1 BCA ¶ 32,815 (2004).

Decision

We deny the claim.

Kyle Chadwick
KYLE CHADWICK
Board Judge