



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

June 27, 2025

CBCA 8308-RELO

In the Matter of CLIFFORD S.

Clifford S., Claimant.

Sarah G. Fishel and James E. Hicks, Office of Chief Counsel, Drug Enforcement Administration, Department of Justice, Springfield, VA, appearing for Department of Justice.

RUSSELL, Board Judge.

Claimant, a civilian employee with the Department of Justice, Drug Enforcement Administration (DEA or agency), transferred from a station in South Africa to a DEA office in Texas. The issue presented for the Board's review is whether claimant is eligible for reimbursement of closing costs he incurred in connection with the purchase of a home in Texas. We find that he is not and, therefore, deny his claim.

Background

On May 24, 2024, DEA, via a career board action, announced that claimant was selected for a transfer from his duty station in South Africa to a DEA office in Texas. Agency Response, Exhibit 1 at 6.¹ The notice reminded employees not to "sign a listing agreement regarding the sale of their residence and/or sign a contract for purchase of [a] residence until after [transfer control number (TCN)] issuance" and that "no expenses may be incurred until receipt of official travel orders." *Id.* at 1. At the time of the career board action, the TCN for claimant had not been issued but, instead, was pending. *Id.* at 6.

¹ All exhibits are attached to the agency response unless otherwise noted.

On June 24, 2024, an employee with DEA's Foreign Personnel Unit, Foreign Operations Division, asked claimant for his desired reporting date. Exhibit 13 at 1-2. In response, claimant requested a reporting date of December 15, 2024. *Id.* at 1.

On September 13, 2024, in an internal agency email, claimant stated that he had been selected for a relocation to a DEA office in Texas and anticipated receiving his TCN in October. Exhibit 5 at 1. In the email, he also noted that he would be moving to Texas in December or early in the following year and that he was in the process of purchasing a home. *Id.* In a separate email that same day, he informed the agency that December 15, 2024, was his anticipated departure from his duty station in South Africa to a DEA office in Texas and requested a relocation letter from DEA to complete closing on a home. *Id.* at 2. In response to claimant's request, a supervisor in DEA's Office of Finance stated, "I don't see that a TCN has been issued for your return [Permanent Change of Station (PCS)] yet" and advised claimant to speak as soon as possible to another DEA employee if claimant had signed a contract for the purchase of a residence before issuance of the TCN. *Id.* at 1-2. Shortly thereafter, on September 23, 2024, claimant closed on a home in Texas. Exhibit 10 at 1. The record does not include a "relocation letter" as requested by claimant or evidence that DEA provided such a letter to claimant prior to him closing on his home.

On October 9, 2024, DEA issued a TCN for claimant's transfer. Exhibit 2 at 1. The TCN document also cautioned that employees must "not sign a listing agreement regarding the sale of their residence and/or sign a contract for purchase of a residence until after [the] TCN issuance" and must not incur any expenses until receipt of official travel orders. *Id.* at 2. The TCN document included contact information for any questions about the transfer. *Id.* A DEA intranet webpage on TCN information also states in an introductory paragraph that "[t]he Career Board is the *initial* authority in support of an employee's [PCS] and issues TCNs for the entire agency but no expenses may be incurred until receipt of official travel orders." Exhibit 8 at 1 (emphasis added). On November 21, 2024, almost two months after claimant closed on his home, DEA issued claimant's official travel orders. Exhibit 3 at 2.

On or around November 27, 2024, claimant submitted a travel voucher for \$5223.42, seeking reimbursement of home purchase closing costs. Exhibit 6 at 1-2. On December 3, 2024, DEA informed claimant that it was denying his voucher because he purchased his home before the TCN was issued. Claimant subsequently filed this claim with the Board relying on the Board's decisions in *Jorge L. Gonzalez*, CBCA 984-RELO, 08-2 BCA ¶ 34,004; *Jason A. Johnson*, CBCA 2608-RELO, 12-1 BCA ¶ 34,914; *Minh N.*, CBCA 7442-RELO, 22-1 BCA ¶ 38,232, and CBCA 7442, 23-1 BCA ¶ 38,305. Claim at 1-2. Claimant argued that the DEA career board action expressed an administrative intent to transfer claimant to a DEA office in Texas, and, based on such, he entered into the real estate agreement on September 23, 2024. *Id.* at 1. He also relies on communications that he

had with an administrative support specialist at DEA headquarters who apparently stated that claimant's curtailment was approved by the career board in May 2024 with a formal TCN eligibility starting on September 4, 2024. *Id.*

In its response to the claim, the agency argues that claimant's communication with DEA administrative staff and the pending TCN on DEA's career board did not evidence administrative intent by the agency to effectuate the transfer. Agency Response at 3-8. Further, DEA asserts that claimant received multiple notices instructing him *not* to incur expenses prior to receipt of official travel orders. *Id.* at 5-6. DEA also provided two affidavits in support of its position on this claim. In one, the section chief of DEA's Foreign Administrative Support Section (OFS) explained the process for TCN issuance and the steps involving the career board and OFS. Exhibit 14 at 1. He noted that "[t]he primary objective of the TCN is to facilitate the approved relocation of an employee from one location to another." *Id.* As for the process related to an employee returning from a foreign post, the section chief explained:

1. The employee is concluding their overseas post and seeks to return to the United States for ongoing service to the nation.
2. The [career board] receives notification from DEA offices regarding vacant positions that need to be filled.
3. Subsequently, the [career board] announces the existing vacant positions, inviting eligible DEA employees to apply for a lateral transfer or promotion.
4. Following a selection process by the [career board], an employee is informed of a pending transfer through a tentative [career board] cable, which includes appropriate [a]gency disclaimers.
5. Negotiations with OFS personnel and the traveler regarding a tentative reporting date are [undertaken].
6. Then the employee [communicates with] an OFS specialist to establish a preferred reporting date. . . . OFS personnel do not possess the authority to approve funding or issue [a] TCN or official orders related to any relocation to or from a [f]oreign [t]our. Any communications with OFS personnel regarding a reporting date is for the purposes of transmitting that information to the [career board] to issue a final TCN, if appropriate.
7. OFS has no influence on whether a final TCN or official orders will be issued.

8. Once TCNs are issued and funding becomes available, the employee is then notified and authorized to commence the relocation process and incur expenses.

Id.

In a second affidavit, the DEA career board executive secretary explained that a career board selection “with a pending TCN is not a definite selection or official intent to formally transfer a DEA employee” as the position may be rescinded or cancelled for several reasons, including, but not limited to, agency restructuring, the special agent in charge or office head needs the employee to go to a different location, or challenges with polygraphs or VISAs arise. Exhibit 15 at 1. Based on these two affidavits and other documentation related to DEA’s return process from a foreign post, the agency requests that the Board deny the claim.

Discussion

By statute, federal agencies are required to pay the relocation expenses of federal employees transferring in the interest of the Government from one permanent duty station to another. 5 U.S.C. § 5724(a) (2018). “As a general rule, when an employee incurs real estate expenses prior to receiving formal notification of a pending transfer, the employee will only be eligible for reimbursement if the agency had manifested a clear ‘administrative intent’ to transfer the employee.” *Brandon J. Thorpe*, CBCA 2103-RELO, 11-1 BCA ¶ 34,687, at 170,847. “Whether an agency has manifested a ‘clear intention’ to transfer an employee prior to issuance of formal notification of its intent depends on the facts and circumstances of the specific situation presented for decision.” *Id.* We must determine whether DEA had expressed an administrative intent to transfer claimant at the time of the closing on his home.

Claimant relies on the DEA career board action of May 24, 2024, and communications with DEA administrative staff in September 2024 as indications of the agency’s administrative intent to transfer him to a DEA office in Texas. DEA relies on affidavits from two DEA officials and repeated notifications to claimant that he should not incur any PCS expenses prior to receipt of official travel orders as evidence that there was no administrative intent to transfer claimant as of the date of the closing on his home in Texas. Specifically, the initial career board action issued in May 2024 reminded claimant not to sign a contract for the purchase of a home or incur any PCS expenses until receipt of official travel orders. Additionally, the TCN document issued in October 2024 as well as the DEA intranet webpage on TCN information included the same notification. DEA, in an affidavit by an agency official, explained why a career board action with a pending TCN does not reflect an

administrative intent to transfer an employee noting that the proposed transfer action might be rescinded or cancelled for a number of reasons including those noted above.

We recognize that the Board in *Gonzalez*, *Johnson*, and *Minh N.*, based on the specific facts in those cases, found that the claimants proved agency administrative intent to effectuate their job changes and relocations, and those claimants were entitled to reimbursement of certain PCS expenses. In *Gonzalez*, the agency did not rebut the claimant's argument (and understanding) that the official who extended the offer of employment had the requisite authority to do so. 08-2 BCA at 168,162. In this case, claimant does not identify a specific DEA official with the requisite authority who offered him a position in Texas prior to claimant incurring the real estate expense at issue. Indeed, the section chief of DEA's OFS stated that "OFS has no influence on whether a final TCN or official orders [are] issued." Exhibit 14. Thus, *Gonzalez* is not factually helpful to claimant's case.

Johnson involved a relocation related to the base realignment and closure initiative pursuant to which the claimant's position, in a transfer of function memorandum, was identified for a transfer that the claimant ultimately accepted. 12-1 BCA at 171,664. Although the Army, the respondent agency in *Johnson*, argued that the claimant was advised during an oral briefing to the claimant and similarly-situated individuals not to incur PCS expenses until receipt of official travel orders, the briefing slides produced in the record before the Board contained no such warning. *Id.* at 171,663. Further, in *Johnson*, the claimant's supervisor and the Army's personnel office confirmed the claimant's move date, and the claimant accepted and signed the agency's transportation agreement prior to the claimant closing on his home. *Id.* The Board determined, in *Johnson*, that the documentation in the record "render[ed] the Army's intent with respect to claimant's transfer clear and unmistakable" and, accordingly, concluded that the claimant was entitled to reimbursement of PCS expenses. *Id.* at 171,664. We do not regard the documentation in this case to be similar or comparable to that in *Johnson*.

In *Minh H.*, as in this case, the DEA career board action contained language regarding the employee not incurring expenses prior to issuance of official travel orders. The Board in *Minh H.* was persuaded that the career board action itself was a sufficient indication of DEA's intent to relocate the employee, explaining that "the DEA Career Board has the requisite authority to make promotions and transfers . . . and that the Career Board cable is treated as an official announcement of the DEA's intent to make promotions, transfers, and similar employment decisions." 22-1 BCA at 185,663. In this case, however, through affidavit, the DEA career board executive secretary explains that a career board selection with a pending TCN, in fact, "is not a definite selection or official intent to formally transfer a DEA employee" and thus, does not evidence administrative intent to effectuate a transfer. Exhibit 15 at 1. A similar type of evidence was not discussed or considered in *Minh H.* The

affidavit is significant for two reasons. First, as the Board has previously found, an agency “[has] broad discretion in determining whether there was administrative intent to transfer an employee.” *Thorpe*, 11-1 BCA at 170,847. And, second, the DEA here, through an official with authority to do so, set out clearly the meaning of the career board action and a pending TCN, namely that neither reflects administrative intent by DEA to transfer claimant. We have no evidence here and, thus, no reason to issue a decision contrary to an affidavit that directly addresses the matter at issue—the administrative intent of a specific personnel action that is appropriately within DEA’s discretion.

Claimant’s reliance on communications from agency administrative personnel to support his position on “administrative intent” is unpersuasive. The section chief of DEA’s OFS, testifying by affidavit, explained that the communication from the agency’s administrative personnel who did not have authority to issue a final TCN or orders was routine, preliminary communication. Such communication was explicitly accompanied by warnings not to incur expenses until a final TCN and official orders were issued. Claimant’s interpretation of this communication as “administrative intent” is, therefore, incorrect. The record does not include evidence that DEA provided the relocation letter requested by claimant prior to the closing on his home but, instead, shows that DEA expressly raised concerns about claimant proceeding with the purchase of a home prior to receipt of a TCN.

The record here, thus, shows that the documentation issued to and communications with claimant prior to his closing do not reflect DEA’s administrative intent to effectuate his transfer but, instead, reflect a tentative action with concomitant notice to claimant that he should not incur PCS expenses prior to receiving official travel orders.

Decision

The claim is denied.

Beverly M. Russell
BEVERLY M. RUSSELL
Board Judge