



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

August 28, 2018

CBCA 6207-RELO

In the Matter of MARK R. GREEN

Mark R. Green, Janesville, WI, Claimant.

Brian F. Binney, Fiscal & Contract Law Unit, Office of the General Counsel, Federal Bureau of Investigation, Department of Justice, Washington, DC, appearing for Department of Justice.

GOODMAN, Board Judge.

Claimant, Mark R. Green, is an employee of the Federal Bureau of Investigation. He asks this Board to review the agency's denial of reimbursement of costs incurred when he sold his home at his previous permanent duty station (PDS) in the United States before being transferred to Egypt.

Factual Background

In June 2015, claimant sold his home at his PDS in Wisconsin in anticipation of an overseas transfer to Cairo, Egypt. On August 9, 2015, claimant reported to his new PDS in Egypt. At that time claimant did not know where he would be transferred in the future if he were transferred from Egypt. He states that at the time of his transfer, he understood that he might be transferred to Wisconsin after his overseas assignment, but that if he were transferred to another duty station in the United States he would seek compensation for the sale of the residence at that time.

On June 28, 2018, claimant received orders to transfer from Egypt to an agency position in Nebraska. Upon receiving these orders, claimant submitted a voucher requesting

reimbursement for allowable expenses arising from the June 2015 sale his home in Wisconsin totaling \$16,080. The agency denied the claim, stating that the “expenses incurred prior to the issuance and acceptance of orders are not reimbursable.”

Discussion

The controlling statute, 5 U.S.C. § 5724a, provides that, subject to the implementing regulations:

an agency shall pay to or on behalf of an employee who transfers in the interest of the Government from a post of duty located outside the United States to an official station within the United States (other than the official station within the United States from which the employee was transferred when assigned to the foreign tour of duty) . . . expenses required to be paid by the employee of the sale of the residence . . . of the employee at the old official station from which the employee was transferred when the employee was assigned to the post of duty located outside the United States

5 U.S.C. § 5724a(d)(2) (2012).

However, the statute also 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.”

5 U.S.C. § 5724a(d)(3).

Thus, if the sale occurred prior to the requisite official notification, then the agency has no authority to reimburse the expenses incurred in the sale. The Federal Travel Regulation (FTR) which implements the statute also states:

reimbursement of any residence transaction expenses (or settlement of an unexpired lease) that occurs prior to being officially notified [of transfer] (generally in the form of a change of station travel authorization) is prohibited.

41 CFR 302-11.305 (2018).

Pursuant to the above statute and regulation, claimant is not entitled to reimbursement for the expenses arising from the sale of his residence in Wisconsin in 2015 before transferring to Egypt, as the transaction occurred three years before claimant was notified that he would be returning from Egypt to Nebraska, a PDS other than the one from which he was transferred when assigned to Egypt. In *Richard B. Piercy*, CBCA 5413-RELO, 16-1 BCA ¶ 36,550, *recon. denied* 17-1 BCA ¶ 36,663, an employee sold his home when he was transferred from Tennessee to Italy. Three years later he was transferred back to Virginia. The Board found that, because he had not been officially notified that he would return to a different duty station at the time he sold his residence before moving to Italy, the government was prohibited by 5 U.S.C. § 5724a(d)(3) and regulation from reimbursing those expenses.

Claimant states that the sale of his residence before his transfer saved the government money, as the government was paying to manage his residence while he was renting it before his transfer to Egypt, and the government would have continued to pay for management while he was in Egypt. However, an employee's good intention to save Government money does not waive statutory and regulatory limitations on reimbursement. *Daniel McGloghlin*, CBCA 1924-TRAV, 10-1 BCA ¶ 34,426, at 169,932; *Jorge L. Gonzalez*, CBCA 984-RELO, 08-2 BCA ¶ 34,004, at 168,161.

Claimant also states that the sale of the residence before his transfer enhanced his job performance while in Egypt, as he did not have to manage the home as rental property during that time. Even so, this circumstance does not enlarge claimant's entitlement to reimbursement of the expenses arising from the sale of the residence in Wisconsin beyond that allowed by statute and regulation.

Claimant hypothesizes that he could have waited to sell the home until he was notified of his transfer from Egypt to Nebraska, and the agency would have then been required to reimburse the expenses arising from the sale. This Board cannot consider what might have happened; we can only base our decision on actual circumstances. Claimant's suggestion as to how this dispute could have been avoided, with a different outcome, is not relevant, and does not entitle him to the reimbursement of expenses that he seeks. *James H. Place*, CBCA 3751-TRAV, 15-1 BCA ¶ 35,903, at 175,510; *Justin M. Kearns*, CBCA 2842-RELO, 12-2 BCA ¶ 35,065, at 172,239.

Decision

The claim is denied.

Allan H. Goodman

ALLAN H. GOODMAN

Board Judge