

Board of Contract Appeals
General Services Administration
Washington, D.C. 20405

February 27, 2004

GSBCA 16275-RELO

In the Matter of HENRY H. ARNOLD IV

Henry H. Arnold IV, Fairfield, CA, Claimant.

Vicki J. Halley, Finance Accounting Officer, United States Army Corps of Engineers, San Francisco, CA, appearing for Department of the Army.

HYATT, Board Judge.

A Government employee who was initially hired overseas is not eligible to be reimbursed for real estate expenses upon being transferred to the United States.

Background

Claimant, Henry H. Arnold IV, a civilian employee of the Department of Defense, was transferred from Kelley Barracks in Stuttgart, Germany, to the Corps of Engineers' San Francisco District September 2002. Mr. Arnold states that his original home of record in the United States was Tampa, Florida. He served in the military and was stationed in Ansbach, Germany, when he completed his military service. Instead of returning to the United States, Mr. Arnold stayed in Germany and accepted a civilian position with the Army and Air Force Exchange there. He paid for his own move from Ansbach, where he had been stationed in the military, to Garmisch. He transferred several times within the Defense Department while working as a civilian in Germany, and eventually was placed on the Priority Placement Program for transfer back to the United States. His permanent change of station orders for the transfer to San Francisco were issued in September 2002. Mr. Arnold states that when he met with the local personnel office to go over his permanent change of station entitlements, he was advised that he was eligible for real estate transaction expenses. Moreover, his travel orders authorized real estate transaction expenses. Accordingly, after returning to the United States, Mr. Arnold purchased a home in California and submitted a claim for \$6699.23 in real estate transaction expenses.

The Corps' San Francisco District reviewed his voucher and disapproved the claim. The reason provided was that Mr. Arnold was hired as a civilian employee of the Federal government for the first time in Germany. As such, he was a local overseas hire and not

eligible for real estate transaction expenses under applicable regulations. Mr. Arnold has asked the Board to review the disallowance of these expenses, noting that he was assured by agency personnel that he would be compensated for these expenses and he bought a house based on this advice.

Discussion

Under the Joint Travel Regulations (JTR), in most circumstances, civilian employees of the Department of Defense who are transferred in the interest of the Government are entitled to reimbursement of certain expenses incurred in connection with the purchase of a new residence at the new permanent duty station. The JTR explain, however, that there are exceptions to this rule. One such exception is when an employee is initially hired overseas and subsequently is transferred to a permanent duty station in the United States. In these circumstances, the employee is not eligible to be reimbursed for real estate expenses. JTR C14000-C2. This regulatory provision is based upon a statute that provides agencies with the authority to reimburse real estate expenses incurred by an employee who transfers to the United States from an overseas duty station, but only so long as the employee was first transferred overseas in the interest of the Government from a duty station in the United States. 5 U.S.C. § 5724a(d)(2) (2000). Because Mr. Arnold was first hired as a civilian employee of the Army in Germany, he is not eligible to be reimbursed for the expenses associated with the purchase of a home upon return to the United States. Wilbert J. Haggray, GSBCA 16139-RELO, 03-2 BCA ¶ 32,387; see also Douglas J. Palmeri, GSBCA 14898-RELO, 99-2 BCA ¶ 30,499; Marcia A. Devine, GSBCA 14878-RELO, 99-2 BCA ¶ 30,498; Theresa F. Zuber, GSBCA 13851-RELO, 97-1 BCA ¶ 28,878.

The agency is also correct in its determination that the erroneous travel authorization does not allow it to reimburse Mr. Arnold. Since there was no authority to issue the orders, they cannot be given effect. Haggray (citing Kevin S. Foster, GSBCA 13639-RELO, 97-1 BCA ¶ 28,688 (1996); Office of Personnel Management v. Richmond, 496 U.S. 414 (1990); Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947)). Nor can claimant's reliance on the incorrect advice of the Army personnel who counseled him concerning his move serve to create an entitlement where none exists. Joseph E. Connelly, GSBCA 16101-RELO, 04-1 BCA ¶ 32,430 (2003); Jacques E. Moss, GSBCA 16150-RELO, 03-2 BCA ¶ 32,392; Aman B. Kay, GSBCA 15543-RELO, 01-2 BCA ¶ 31,508. The claim is denied.

CATHERINE B. HYATT
Board Judge