

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

December 14, 2000

GSBCA 15422-RELO

In the Matter of STEPHEN W. VAN DYKE

Stephen W. Van Dyke, Richmond, KY, Claimant.

Barbara Gaydos, Supervisor, PCS & Extended TDY Section, Defense Finance and Accounting Service, Rock Island, IL, appearing for Department of Defense.

DeGRAFF, Board Judge.

Stephen W. Van Dyke is an employee of the Department of Defense (DoD). In December 1995, DoD issued a travel authorization in connection with Mr. Van Dyke's permanent change of station from Indiana to Germany. A box was checked on the travel authorization to show that Mr. Van Dyke was authorized to incur reimbursable real estate transaction expenses "per [Joint Travel Regulations (JTR)]." Mr. Van Dyke says that his supervisors and his personnel office encouraged him to sell his house in Indiana immediately and assured him that he would be reimbursed for his sales expenses. Consequently, Mr. Van Dyke sold his house in Indiana in March 1996. At that time, DoD had not told Mr. Van Dyke whether he would be returning to Indiana from Germany. In November 1999, DoD authorized Mr. Van Dyke's permanent change of station from Germany to Kentucky. DoD decided not to reimburse Mr. Van Dyke for the sales expenses he incurred when he sold his house in Indiana in 1996, and Mr. Van Dyke asks us to review DoD's decision.

DoD correctly determined that it cannot reimburse Mr. Van Dyke for the expenses he incurred when he sold his house in Indiana. Federal statute provides that when an agency transfers an employee from a duty station within the United States to a duty station outside the United States and then back to the United States, the agency can reimburse the employee for the expenses of selling a house at the first duty station in the United States only if the sale occurs after the employee receives official notification that he will not return to that duty station. 5 U.S.C. § 5724a(d)(2), (3) (Supp. IV 1998).¹ The JTR, referred to in Mr. Van

¹ The substance of the statute is the same today as it was in 1995, when DoD issued Mr. Van Dyke's first travel authorization, and in 1996, when Mr. Van Dyke sold his house in Indiana. 5 U.S.C. § 5724a(a)(4)(A) (1994); 5 U.S.C. § 5724a(d)(2), (3) (Supp. III 1997).

Dyke's December 1995 travel authorization, are consistent with the statute.² Because Mr. Van Dyke sold his house before DoD officially notified him that he would return to a duty station other than the one that he left in Indiana, the statute and regulations prevent DoD from reimbursing Mr. Van Dyke for the expenses he incurred in connection with the sale.

It is unfortunate that DoD provided Mr. Van Dyke with incorrect advice when he transferred from Indiana to Germany. As we have previously explained, however, DoD cannot reimburse an employee in Mr. Van Dyke's circumstances because the reimbursement would be contrary to statute and regulation. Marilyn A. Whitworth, GSBCA 15174-RELO, 00-1 BCA ¶ 30,811.

MARTHA H. DeGRAFF
Board Judge

² The current regulations are substantially the same as prior regulations. Compare JTR C14000-D.2 (Oct. 1, 2000), with JTR C14000-C.4 (Sept. 1, 1995).