

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

May 10, 2002

GSBCA 15807-RELO

In the Matter of ROBERT K. OJA

Robert K. Oja, Eugene, OR, Claimant.

M. Susan Fink, Assistant District Counsel, Corps of Engineers, Department of the Army, Elmendorf Air Force Base, AK, appearing for Department of the Army.

BORWICK, Board Judge.

In this matter, claimant, Robert K. Oja, a civilian employee of the United States Army Corps of Engineers, challenges the agency's refusal to reimburse him for real estate transaction expenses incurred after his separation from the agency and his return from Alaska to Oregon, even though claimant's travel authorization stated he was entitled to real estate transaction expenses. In addition, claimant maintains he is entitled to payment of the Relocation Income Tax Allowance (RITA). Claimant also challenges the agency's establishment of a debt for the cost of shipping 1720 pounds of household goods (HHG) over the allowable maximum of 18,000 pounds.

We sustain the decision of the agency. Despite the issuance of erroneous travel orders, claimant, as a separating employee returning from overseas, was not entitled to reimbursement of real estate transaction expenses. Nor is claimant entitled to payment of the RITA. The agency's establishment of the debt for the cost of moving the excess weight of HHG was in accordance with regulation. The Board denies the claim.

Background

Real Estate Transaction Expenses and Relocation Income Tax Allowance

On June 9, 1999, the agency granted claimant separation travel from Eagle River, Alaska to Eugene, Oregon. In the travel authorization, the agency granted claimant shipment of HHG not to exceed eighteen thousand pounds and, erroneously, real estate transaction expenses. On November 20, 1998, the agency had told claimant's attorneys that, upon

claimant's separation from Federal service, claimant would be entitled to travel and transportation costs as well as the cost of moving HHG to his residence at Galveston, Texas, near his previous duty station, but would not be entitled to reimbursement of real estate expenses.

Upon the sale of his residence at Eagle River, claimant incurred real estate transaction expenses of \$13,648 and, on April 11, 2000, sought reimbursement from the agency. On June 23, 2000, the agency issued an amended travel authorization deleting any entitlement to real estate transaction expenses; the agency advised claimant that it would not reimburse him for the \$13,648 of incurred expenses.

On November 6, 2000, claimant's attorneys demanded payment of the real estate transaction expenses of \$13,648 incurred by claimant in accordance with the original travel authorization of June 9, 1999, plus interest. Claimant's attorneys also submitted an additional voucher, signed by claimant and dated October 11, 2000, for \$756.75 for unidentified real estate transaction expenses incurred in the sale of claimant's residence in Eagle River, Alaska. Claimant also demanded that the agency reimburse the RITA.

On November 22, 2000, the agency wrote claimant's attorney that: (1) the agency had erroneously granted claimant reimbursement of real estate transaction expenses; (2) claimant did not meet statutory or regulatory requirements for reimbursement of real estate transaction expenses since he was a separating employee, not a transferring employee; (3) the agency could not waive statutory and regulatory requirements for reimbursement of real estate transaction expenses by checking the wrong box on a travel authorization; and (4) the agency's refusal to reimburse real estate transaction expenses was correct. The agency also refused to pay claimant the RITA since employees returning from overseas assignments for the purposes of separation were not eligible for the RITA.

Shipment of Household Goods

Claimant shipped 19,720 pounds of HHG from Eagle River to Eugene, Oregon. On August 28, 2000, the agency received the invoice from the carrier and paid it. On November 21, 2000, the agency audited the payment and discovered that 1720 pounds over the allowed maximum of 18,000 pounds had been shipped, which, according to the agency's calculation, resulted in an amount due of \$1287.60. On February 16, 2001, the agency billed claimant \$1287.60 for the overweight in the shipment. On May 7, claimant suggested to the agency that it deduct that figure from the amount purportedly due on his real estate transaction claim. Claimant complained about the year and one half delay after his move in the agency's assessing the debt, but did not dispute the methodology the agency used to calculate the amount owed.

Discussion

Real Estate Transaction Expenses and Relocation Income Tax Allowance

Statute provides that employees who transfer in the interest of the Government for permanent duty are entitled to reimbursement of real estate transaction expenses. 5 U.S.C. §§ 5724, 5724a (1994 & Supp. V 1999). Separated employees are not entitled to

reimbursement of real estate transaction expenses. 41 CFR 302-1.103 to 1.104 (1999); Joint Travel Regulations (JTR) C14001(4).¹ It is settled that return travel from a duty station outside the Continental United States does not constitute a permanent change of station for the purpose of the statute authorizing reimbursement of real estate transaction expenses. Louis David Carter, GSBCA 15381-RELO, 00-2 BCA ¶ 31,137 (citing Arnold Krochmal, B-213730 (Apr. 17, 1984)). Claimant states that he was misled by, and relied upon, the erroneous travel authorization. While we sympathize with claimant, the erroneous travel authorization issued by the agency in contravention of statute and regulation, does not enlarge claimant's entitlement. John C. Permaul, GSBCA 15828-RELO (Apr. 30, 2002); Carter. The agency is not estopped from refusing payment because it issued the erroneous authorization. Office of Personnel Management v. Richmond, 496 U.S. 414, 425-26 (1990); Paul Henderson, GSBCA 15480, 01-2 BCA ¶ 31,501.

The JTR exclude employees returning from overseas from payment of the RITA. JTR C16003-B.3.

Shipment of Household Goods

Claimant was entitled to ship a maximum of eighteen thousand pounds of HHG at Government expense. 5 U.S.C. 5722 (a)(2), 5724(a)(2) (1994). The maximum is established by statute, and neither the agency nor the Board has authority to waive the limitation. 5 U.S.C. § 5724(a)(2) (1994); JTR C8010 note and C8010-B.1; Marion T. Silva, GSBCA 15673-RELO (Feb. 14, 2002); Marina A. Galindo, GSBCA 15501-RELO, 02-1 BCA ¶ 31,775. The agency's establishment of the debt is in accord with statute and regulation. 41 CFR 302-8.3(b)(5); JTR C4353, C8010-B.1, C8115-A.1; Silva.

Claimant also challenges the processes by which the agency established the debt. That matter is beyond our delegated jurisdiction to consider. Gary Morris, GSBCA 15290-RELO, 00-2 BCA ¶ 31,132.

The Board sustains the decision of the agency and denies the claim.

ANTHONY S. BORWICK
Board Judge

¹ Upon separation, claimant moved to Eugene, Oregon instead of Galveston, Texas, which was claimant's residence at the time of his assignment to Alaska. The agency acknowledges claimant's entitlement to reimbursement of allowable travel expenses and the allowable expenses of shipment of HHG as a separating employee returning to an alternate destination since the constructive cost of travel and transportation to Eugene, Oregon did not exceed the cost of travel and transportation to Galveston, Texas. 5 U.S.C. § 5722(a)(2); Thelma Grimes, 63 Comp. Gen. 281 (1984).