

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

September 26, 2003

GSBCA 16107-RELO

In the Matter of WILLIAM D. DOOLEY

William D. Dooley, Wolf Creek, MT, Claimant.

William A. Curtis, Acting Director, Defense Security Service, Alexandria, VA,
appearing for Department of Defense.

HYATT, Board Judge.

Claimant, William D. Dooley, a retired employee of the Defense Security Service (DSS), seeks reimbursement of the costs of selling a home in Fairbanks, Alaska, incident to his retirement from federal service and return to the continental United States. DSS has disallowed his claim for the real estate expenses in question on the ground that the agency lacks authority to pay these costs.

Background

Mr. Dooley served as an agent for DSS in Fairbanks, Alaska, from 1991 until October 2002, when he retired from Government service. Prior to his retirement, claimant was scheduled to return to the continental United States in September 1998. Although he wished to return to the continental United States at that time, there were no agents available to take his place in Fairbanks and he was asked to extend his tour. Apparently in anticipation that he would retire in October 2002, Mr. Dooley agreed to extend the tour for another two years subject to retention of permanent change of station (PCS) benefits, including the payment of real estate transaction expenses in connection with the sale of his house in Alaska at that time. The agency requested approval of the extension of his tour, with the notation that "at the conclusion of this extension he will be entitled to PCS back to the 'lower 48.'" The tour extension was approved by the Director of DSS.

Mr. Dooley completed his additional tour in Alaska and then retired and moved to the continental United States. Prior to leaving Alaska, while completing paperwork for his retirement, Mr. Dooley inquired about the process for applying for reimbursement of the costs of selling his house in Alaska. He was advised that DSS could not pay these costs in

connection with a separation from Government service. He was told to submit a "waiver request," which he did, asking that the pertinent provisions of the JTR be waived since he had fulfilled his obligation to complete another tour. The agency responded in writing that, regardless of any understanding that may previously have been reached, there is no authority to pay real estate transaction expenses in the circumstances. Mr. Dooley has asked the Board to review the agency's denial of his claim.

Discussion

By statute, agencies are authorized to pay per diem, transportation expenses for the immediate family, movement and temporary storage of household goods and, additionally, such items as an allowance for miscellaneous expenses, temporary quarters subsistence expenses (TQSE), and certain real estate transaction costs, when an employee is transferred, in the interest of the Government, from one official station to another for permanent duty. 5 U.S.C. §§ 5724, 5724a (2000). Return travel from a duty station outside the continental United States for the purpose of separation or retirement does not constitute a permanent change of station for the purpose of the statute, however. Louis David Carter, GSBCA 15381-RELO, 00-2 BCA ¶ 31,137 (citing Arnold Krochmal, B-213730 (Apr. 17, 1984)).

The expenses payable to an employee who is returning to the continental United States for separation from Government service or retirement are governed by 5 U.S.C. § 5722. Expenses recoverable under the return rights provision are significantly limited compared to the expenses payable to an employee relocating to a new permanent duty station in the interest of the Government. In particular, reimbursement of real estate expenses associated with the sale and purchase of homes, the miscellaneous expenses allowance, and reimbursement of TQSE are not part of the return rights package. See, e.g., Jackie Leverette, GSBCA 15806-RELO, 03-1 BCA ¶ 32,119; Robert K. Oja, GSBCA 15807-RELO, 02-2 BCA ¶ 31,955; Frederick J. Barth, GSBCA 15432-RELO, 01-2 BCA ¶ 31,331. Neither the Federal Travel Regulation (FTR) nor the Joint Travel Regulations (JTR), which apply to civilian employees of the Defense Department, permit the payment of real estate transaction expenses in these circumstances. See 41 CFR 302-3.300 (2002); JTR C14001-4. The employees in DSS who recommended that Mr. Dooley should be reimbursed the expenses of a PCS upon retirement after extending his tour in Alaska had no authority to waive the pertinent regulations.

Although it is unfortunate that claimant was led to believe that he would be eligible for reimbursement of his real estate transaction expenses if he extended his tour in Alaska and then retired, good faith reliance on erroneous advice does not provide a basis to allow the payment of such costs -- the Government is not bound by representations or acts of its agents which exceed the actual authority conferred by statute or regulation. Carter. The agency has properly determined that it cannot pay the claimed expenses.

CATHERINE B. HYATT
Board Judge

