

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

October 28, 2003

GSBCA 16142-RELO

In the Matter of VINCENT P. MOKRZYCKI

Vincent P. Mokrzycki, Bayonne, NJ, Claimant.

Rick Miller, Civilian Travel and Allowances, Personnel Resources, Legislation and Entitlements, Office of the Chief of Staff, Department of the Air Force, Washington, DC, appearing for Department of the Air Force.

NEILL, Board Judge.

Claimant, Mr. Vincent P. Mokrzycki, a civilian employee of the United States Air Force, has appealed his agency's denial of a request to extend the two-year period provided under regulation for receiving certain benefits associated with a transferred employee's residence transactions. On review of the record before us, we affirm the agency's determination.

Background

In August of 2000, Mr. Mokrzycki was transferred from a position he held with the Army Corps of Engineers outside the continental United States (OCONUS) to a new position with the Air Force. His new permanent duty station (PDS) with the Air Force was to be in Rosslyn, Virginia. Claimant's home of record, prior to being assigned overseas, had been Bayonne, New Jersey.

Mr. Mokrzycki obtained his new position with the Air Force through the priority placement program of the Department of Defense (DoD). The effective date of his transfer was on or about August 25, 2000. When his search for housing near his new PDS proved unsuccessful, he decided instead to settle his family in Bayonne, New Jersey. Before the expiration of the two-year period for completing residence transactions in the vicinity of the new PDS expired, Mr. Mokrzycki and his wife signed a contract for the construction of a new home in Bayonne. However, because the estimated closing date of October 1, 2002, fell outside the two-year period, Mr. Mokrzycki requested that the period be extended. In making this request, he stated that he had been unable to obtain suitable housing due to the existence of a unique seller's market in the national capital region.

The Air Force denied Mr. Mokrzycki's request for an extension of the two-year period on the ground that he had failed to make the requisite showing that extenuating circumstances prevented him from completing a purchase within the initial two-year period and that the delayed transaction was reasonably related to his permanent change of station (PCS).

On January 21, 2003, Mr. Mokrzycki and his wife finally went to settlement on their new home in Bayonne, New Jersey. In April of the same year, Mr. Mokrzycki asked the Air Force to reconsider its earlier denial of his request for an extension of the two-year period. He explained that his residence in Bayonne was one from which he commuted regularly to his new PDS and that his delayed purchase of the residence was reasonably related to his PCS, since his family lives in the residence and it is located at his home of record.

The office to which claimant first sent his request for reconsideration promptly returned the request without taking action on it. In returning the request, the agency advised claimant that the request still appeared deficient regarding the extenuating circumstances justifying an extension. The office also identified a different office to which the request for reconsideration should be sent for final action.

By memorandum dated April 16, 2003, Mr. Mokrzycki submitted his request for reconsideration to the office indicated. As previously recommended to him, he revised the request to include additional information on what he considered to be the extenuating circumstances justifying the requested extension.

By memorandum dated May 1, 2003, the Air Force denied the request for reconsideration. In denying the request, the agency explained that an extension would not be granted for a residence in Bayonne, New Jersey. The reason given was that under paragraph C14000-A.4 of DoD's Joint Travel Regulations (JTR), an eligible employee is authorized reimbursement for certain expenses incurred in connection with the purchase of a residence at the new PDS provided the residence is one from which the employee regularly commutes to and from work. The agency further explained that this requirement for regular commuting has consistently been held by this Board to mean commuting on a daily rather than on a weekly, weekend, or monthly basis. According to the agency, therefore, Mr. Mokrzycki was ineligible for the benefits he sought to obtain through an authorized extension of the two-year limitation period. Hence, the agency reaffirmed the original denial of the requested extension, albeit for a more specific reason than previously given. It is this determination which claimant now asks us to review.

Discussion

The relocation benefit which claimant is seeking here is based upon the provision of law that when an employee transfers in the interest of the Government from one official station to another for permanent duty, the agency is to reimburse the employee for expenses associated with the purchase of the employee's residence at the new official station. 5 U.S.C. § 5724a(d) (2000). The agency has correctly pointed out to Mr. Mokrzycki, that the JTR (to which the claimant is subject as a civilian employee of the DoD) expressly state that this benefit is not available if the employee does not commute regularly from the residence

at the new official station. The agency is likewise correct in its understanding of the many decisions we have rendered regarding the meaning of the phrase "commute regularly" when used with reference to this benefit.

Under the current version of the Federal Travel Regulation (FTR), the provision which implements 5 U.S.C. § 5724a(d) states that an employee may receive certain reimbursements for the purchase of a residence "from which you regularly commute to and from work on a daily basis . . ." 41 CFR 302-11.100 (2002). The phrase "on a daily basis" was not included in the version of the FTR in effect at the time of claimant's transfer in August 2000. Nevertheless, as the agency pointed out to claimant, we had repeatedly explained that the requirement in the regulation, as it then read, that the employee commute regularly from the residence, was to be understood as meaning a daily commute. *E.g.*, Richard S. Citron, GSBCA 15166-RELO, 00-1 BCA ¶ 30,788; Ezzat Asaad, GSBCA 14484-RELO, 98-1 BCA ¶ 29,667; Malcolm L. Jowers, GSBCA 13727-RELO, 97-1 BCA ¶ 28,800.

We had likewise held that what we had to say regarding the meaning of the phrase "commute regularly" as it appeared in the FTR was equally true for the phrase as used in JTR C14000-A.4. David Morrell, GSBCA 15229-RELO, 00-1 BCA ¶ 30,899. Neither was the Board's interpretation of the phrase a new one. The General Accounting Office (GAO), our predecessor in deciding cases of this nature, had traditionally interpreted the phrase "commute regularly" to mean daily commuting. *See* Jesse Jackson, Jr., B-251559 (Mar. 31, 1993); John W. Reising, B-238086 (June 8, 1990); Donald R. Stacy, 67 Comp. Gen. 395 (1988).

This interpretation of the phrase as rendered by GAO and subsequently adopted by us is a reasonable and practical accommodation to the statutory entitlement which the FTR seeks to implement. The statute states that a transferred employee will be reimbursed costs associated with the purchase of a residence at the new official station. Just how close the residence has to be to the new official station is, therefore, open to question. The practical rule adopted by GAO, and which this Board has elected to follow, is that a newly purchased residence qualifies under this provision if it is one from which the transferred employee commutes daily to his or her new PDS. If beyond that point, the residence simply does not qualify for the entitlement.

Claimant readily admits in his appeal to the Board that he does not commute on a daily basis to his PDS in Rosslyn, Virginia, from his new residence in Bayonne, New Jersey. Nevertheless, he apparently believes that he is entitled to reimbursement of real estate expenses associated with the purchase of that residence because it is located in the same area where he actually resided before embarking on his OCONUS assignment. We are aware of no such benefit. The statute and implementing regulations dealing with reimbursement of real estate expenses incurred by a transferred employee in purchasing a new residence speak of a residence at the new official station. They say nothing regarding the purchase of a residence at the employee's prior CONUS station.

In support of his claim, Mr. Mokrzycki cites to us provisions in his original service agreement (DD Form 1617) and in JTR C8500 which speak of the employee's eligibility for

return travel and transportation allowances at government expense for himself, his dependents, or his household effects, to his actual residence at time of appointment to an OCONUS post. These provisions have no bearing on the benefit he seeks. In registering for DoD's priority placement program toward the end of his OCONUS tour, claimant elected to be transferred, at the Government's expense, to a new official station in CONUS rather than to separate from federal service and be returned, at the Government's expense, to where his actual residence was prior to his overseas assignment.

As an employee transferred in the Government's interest back to CONUS, Mr. Mokrzycki was authorized reimbursement of real estate expenses.¹ Pursuant to statute and regulation, this meant that he could be reimbursed for expenses associated with the purchase of a residence within daily commuting distance of his new official station. He chose instead to purchase a residence outside that area and thus rendered himself ineligible for the benefit. Under the circumstances, therefore, it made no sense whatsoever to extend the two-year period established under regulations for seeking such a benefit since the claimant is, in fact, ineligible to receive it. Consequently, we affirm the agency's denial of claimant's request to extend the two-year period.

Decision

The agency's denial of Mr. Mokrzycki's request is affirmed. The claim is denied.

EDWIN B. NEILL
Board Judge

¹ In requesting reconsideration of the agency's denial of his request to extend the period for claiming real estate expenses, claimant states that his original PCS orders did not originally authorize real estate expenses but that this error was corrected in November 2000.