

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

November 22, 2005

GSBCA 16704-RELO

In the Matter of DOMENICANGELO D'ANGELLA

Domenicangelo D'Angella, Tampa, FL, Claimant.

Judy Hughes, Travel Management and Procedures Office, Defense Finance and Accounting Service, Department of Defense, Columbus, OH, appearing for Department of Defense.

BORWICK, Board Judge.

In this matter, claimant, Mr. Domenicangelo D'Angella, seeks reimbursement from the Department of the Navy, agency, for real estate transaction expenses associated with his overseas permanent change of station (PCS) from Fort Bragg, North Carolina, to Stuttgart, Germany. Claimant incurred those expenses when he sold his house in North Carolina before being officially notified that he would not be returning to North Carolina at the conclusion of his overseas tour of duty. For that reason, the agency denied claimant's request for reimbursement. We sustain the decision of the agency since it correctly applied statute and the implementing Federal Travel Regulation (FTR) and Joint Travel Regulations.

Claimant explains that he was hired by the agency for a position in Stuttgart, Germany. At the time of claimant's hire, he was a government employee working at Fort Bragg, North Carolina. A memorandum for the record, dated October 18, 2001, in the agency's human resource office stated as follows:

Domenicangelo D'Angella

Mr. D'Angella was hired from the Army in Ft. Bragg to fill a position which is located in Stuttgart [Germany]. According to Sonny Fann, [claimant's] supervisor at PAX [Patuxent River Naval Air Station Complex], Mr.

D'Angella will be in Germany for [two] years with a possibility of staying up to [five] years. When he does return to NAWC [Naval Air Warfare Center] from OCONUS [outside the continental United States], he will not be returning to Ft. Bragg.

Claimant states that he relied upon that information in deciding to sell his house in Pinehurst, North Carolina. On or about May 30, 2001, claimant sold his house and incurred \$18,785 of real estate transaction expenses. Claimant reported for duty in Stuttgart on or about March 11, 2001. On July 9, 2001, claimant filed a reimbursement voucher for \$11,285 of those expenses. On or about January 9, 2002, by e-mail message, the agency denied claimant reimbursement of the claimed real estate transaction expense reimbursement because he had not been officially notified that he would be returning to a domestic permanent duty station other than the one from which he had transferred overseas.

By travel authorization dated October 21, 2004, the agency issued to claimant a PCS authorization for claimant's transfer from his overseas post in Germany to MacDill Air Force Base, Florida, a permanent duty station different from claimant's previous domestic duty station at Fort Bragg, North Carolina.

On June 10, 2005, claimant appealed the agency's denial of reimbursement to the agency's Human Resources Department at Patuxent River, Maryland. That department forwarded the claim to this Board for determination.

Discussion

Statute provides:

(2) Under regulations prescribed under section 5738, an agency shall pay to or on behalf of an employee who transfers in the interest of the Government from a post of duty located outside the United States to an official station within the United States (other than the official station within the United States from which the employee was transferred when assigned to the foreign tour of duty)--

(A) expenses required to be paid by the employee of the sale of the residence (or the settlement of an unexpired lease) of the employee at the old official station from which the employee was transferred when the employee was assigned to the post of duty located outside the United States; and

(B) expenses required to be paid by the employee of the purchase of a residence at the new official station within the United States.

(3) Reimbursement of expenses under paragraph (2) of this subsection shall not be allowed for any sale (or settlement of an unexpired lease) or purchase transaction that occurs *prior to official notification that the employee's return to the United States would be to an official station other than the official station from which the employee was transferred when assigned to the post of duty outside the United States.*

5 U.S.C. § 5724a(d)(2)(2000) (emphasis supplied). The FTR during the relevant time frame was to the same effect, 41 CFR 302-6.1(g)(4) (2001), as was the JTR. JTR C14000-C4, D2 (March 1, 2001).¹ We have consistently held, in light of the statute and the FTR and JTR, that employees may not be reimbursed for real estate transaction expenses incurred in selling their domestic residences before they were officially notified of their transfer to a domestic duty station different from the one they had left. *Donald W. Owens*, GSBCA 16533-RELO, 05-1 BCA ¶ 32,875; *Edward J. Nanartowich*, GSBCA 15237-RELO, 01-1 BCA ¶ 31,290; *Marilyn A. Whitworth*, GSBCA 15174-RELO, 00-1 BCA ¶ 30,811; *Johnnie M. Jones*, GSBCA 15079-RELO, 00-1 BCA ¶ 30,710.

In this instance, the agency official's notification of claimant's transfer to a domestic duty station different from the one claimant had left came on October 21, 2004, well after claimant had sold his residence in North Carolina. The statement by claimant's supervisor in North Carolina that claimant would not be returning to Fort Bragg does not constitute official notification of his transfer to a different domestic duty station. *Owens* (supervisor's statement of employee's lack of return rights to domestic duty station not the official notification required by statute and regulation.)

Any advice given claimant that the statement of claimant's supervisor would constitute official notification and would therefore entitle claimant to reimbursement of the expenses claimed was erroneous. Erroneous advice does not enlarge claimant's entitlements defined by statute and regulation; such advice can not obligate the Government to pay monies that would violate statute and regulation. *Nanartowich* (citing *Kevin S. Foster*, GSBCA 13639-RELO, 97-1 BCA ¶ 28,688 (1996); *see also Office of Personnel Management v. Richmond*, 496 U.S. 414 (1990); *Federal Crop Insurance Corp. v. Merrill*, 332 U.S. 380 (1947)). The Board, therefore, must deny the claim.

¹ The current provisions of the FTR and JTR are the same. *See* 41 CFR 302-11.2(b)(2), 302-11.305 (2004); JTR C14000-C4, D2 (December 1, 2004).

ANTHONY S. BORWICK
Board Judge