

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

January 31, 2006

GSBCA 16755-RELO

In the Matter of ROBERT W. RATLIFF

Robert W. Ratliff, Orlando, FL, Claimant.

Terry Riffel, Associate Director, Financial Operations Service, Financial Services Center, Department of Veterans Affairs, Austin, TX, appearing for Department of Veterans Affairs.

GOODMAN, Board Judge.

Claimant is an employee of the Department of Veterans Affairs (agency or VA). He has asked this Board to review the agency's denial of reimbursement of real estate expenses that he may incur in a permanent change of station (PCS) move.

Factual Background

In May 2001 claimant accomplished a PCS from his former permanent duty station (PDS) in Nashville, Tennessee, to Waco, Texas, to serve as deputy director of the Central Texas Veterans Healthcare System. He states that because it soon became apparent that he would be asked to relocate again in the near future, he did not sell his residence in Tennessee. He rented government quarters on the Waco VA Campus and commuted to Tennessee on weekends to see his family.

In December 2004 claimant received a long-term temporary duty (TDY) assignment to serve as interim director of the Canandaigua VA Medical Center in New York. He remained on TDY in New York until he received orders to accomplish another PCS move from Texas to a new PDS in Orlando, Florida, to become the director of the Orlando

Healthcare System in November 2005. Claimant wishes to sell his home at his former PDS in Tennessee and purchase a home at his new PDS in Florida. The agency has advised him that it will not reimburse real estate expenses that would be incurred as the result of the sale of the home in Tennessee. Claimant asks this Board to review the agency's decision.

Discussion

When an agency transfers an employee from one PDS within the United States to another such place, in the interest of the Government, the employee is entitled to be reimbursed for "expenses of the sale of [his or her] residence . . . at the old official station." 5 U.S.C. § 5724a(d) (2000). The Federal Travel Regulation (FTR) provides that the residence for which reimbursement is permissible is "the residence or other quarters from which the employee regularly commutes to and from work at the time he/she was first officially notified by competent authority of his/her transfer to the new official station." 41 CFR 302-11.100 (2004).

The agency determined that it cannot reimburse claimant for real estate expenses when claimant sells his residence in Tennessee as the result of his current PCS. It bases this determination on two reasons: 1) claimant failed to sell his home in Tennessee and establish another residence at his PDS in Texas within the time required by the FTR to complete this transaction in conjunction with his prior PCS from Tennessee to Texas; and 2) because claimant did not regularly commute from his residence in Tennessee to his PDS in Texas at the time he received his notice of transfer, that residence is therefore not his official residence for the purpose of entitlement to reimbursement of real estate expenses in conjunction with his PCS move from Texas to Florida. The agency's determination is correct.

In *Richard S. Citron*, GSBCA 15166-RELO, 00-1 BCA ¶ 30,788, a VA employee, whose circumstances were in some respects similar to those of claimant in the instant case, sought reimbursement of real estate expenses for the sale of a residence not located at his current PDS in conjunction with a PCS move. The employee accomplished a PCS from Pennsylvania to Ohio. While working in Ohio for almost four and one-half years, he lived in government quarters. He was then sent to Tennessee on TDY for a year and one-half. During this entire period, the employee maintained his residence at his former PDS in Pennsylvania, where he visited his family on weekends. The employee was then transferred from Ohio to Illinois. For a brief period before his transfer, he returned to work at his current PDS in Ohio and commuted from his residence in Pennsylvania until the PCS was accomplished to the new PDS. He sold his residence at his former PDS and bought a residence at the new PDS. The agency requested this Board's advice as to the employee's

entitlement to reimbursement for real estate expenses incurred in the sale of the residence at the former PDS.

In *Citron*, we addressed the two reasons asserted by the VA for denying reimbursement in the instant case. We held that the fact that Mr. Citron had not sold his residence at his former PDS as the result of his previous PCS move was not relevant. Rather, the analysis must focus on whether the residence that he was selling was one from which he was commuting or would have been commuting to his current PDS at the time he was directed to move to the new PDS.

Mr. Citron had been on long-term TDY before receiving notice of his PCS. The only residence that he had was located at his former PDS. As this residence was within commuting distance of his current PDS, he was able to commute daily from there after the termination of his long-term TDY until he moved to the new PDS. He therefore met the statutory and regulatory requirements for reimbursement of expenses arising from the sale of this residence when he transferred to the new PDS.

Claimant, unlike Mr. Citron, was on extended TDY when he received notice of his transfer. In *Citron*, we addressed this possibility, and held that an employee on extended TDY would not be penalized for the fact that he or she was not making a daily commute to the current PDS as long as, when the employee received notice of transfer, he or she had a residence from which the employee could and would have feasibly commuted on a regular basis to the current PDS if not on TDY. The claimant's residence at his former PDS was not sufficiently close to his current PDS to have allowed him feasibly to commute from there on a regular basis. There is therefore no statute or regulation which entitles claimant to reimbursement for real estate expenses incurred in the sale of that residence.

Decision

The claim is denied.

ALLAN H. GOODMAN
Board Judge