

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

November 29, 2006

GSBCA 16928-RELO

In the Matter of WILLIAM DUNCAN BAKER

William Duncan Baker, McConnell Air Force Base, KS, Claimant.

Rick Miller, Civilian Travel and Overseas Allowances Policy Manager, Force Sustainment Division, Department of the Air Force, Washington, DC, appearing for Department of the Air Force.

GOODMAN, Board Judge.

Claimant, William Duncan Baker, is a civilian employee of the Air Force. He has asked this Board to review the agency's denial of his request for reimbursement of real estate expenses incurred during a permanent change of station (PCS) move.

Factual Background

In July 2004 claimant was assigned from Little Rock Air Force Base, Arkansas, to Kirtland Air Force Base (Kirtland), New Mexico, under a term appointment. Claimant states that he never had any intent to establish residency near Kirtland unless his assignment became permanent, so he rented an apartment in Albuquerque from which he commuted to Kirtland during the week. While employed at Kirtland, claimant owned a home in Canyon, Texas, approximately 290 miles from Kirtland, where his family lived. He returned to Canyon on the weekends. Claimant voted and paid taxes in the county in which Canyon was located.

Claimant was notified on March 14, 2005, of his pending transfer from Kirtland to McConnell Air Force Base, Kansas, with a report date of April 20, 2005. On that same day claimant gave thirty days' notice to vacate his apartment in Albuquerque. Claimant states that a few days later he received the worksheet for the preparation of his official PCS orders in which he indicated that his residence of sale would be his home in Canyon, Texas. While awaiting the issuance of PCS orders, claimant executed a service agreement¹ on March 29, 2005. He and his wife performed a house-hunting trip to the new permanent duty station from Thursday, March 31, to Sunday, April 3, 2005.

The next week claimant worked four days and took leave on Friday, April 8, returning for the weekend to his Texas residence. He returned to work on Monday, April 11, and states that he commuted daily from his Texas residence until his final day of work on Thursday, April 14, when he actually received his PCS orders which had been issued on April 12 and authorized reimbursement of real estate expenses. Claimant asserts that he began a daily commute to and from work on the evening of Thursday, April 7, and that when he was officially notified to transfer to a new official station he was commuting to and from work on a daily basis from the only residence he had -- his home in Canyon, Texas.

Thereafter, claimant sold his residence in Texas and requested reimbursement of real estate expenses for the sale. The agency denied reimbursement, stating that "in order to adjudicate the real estate claim, this property must have been the claimant's primary residence and the individual must commute to work daily from this location." Claimant has asked this Board to review the agency's denial of reimbursement of real estate expenses incurred in the sale of his home in Texas.

Discussion

By statute, agencies are to reimburse employees for real estate expenses incurred in the sale of a residence at the old official station incident to a transfer in the interest of the Government. 5 U.S.C. 5724a(d) (2000). Under the Federal Travel Regulation (FTR), which implements this statutory provision, to qualify for reimbursement, this residence must be the one "from which [the employee] regularly commute[d] to and from work on a daily basis and which was [the employee's] residence at the time [he or she was] officially notified by competent authority to transfer to a new official station." 41 CFR 302-11.100 (2005) (FTR 302-11.100). The pertinent provisions of the Joint Travel Regulations (JTR), applicable to

¹ This is an agreement in which the employee agrees to remain in the service of the Government for a specified period after relocation.

relocation expenses incurred by civilian Defense Department employees, are similar. JTR C14000.²

This Board has consistently decided that an employee who commutes to work from living quarters close to his duty station on a daily basis and returns only on weekends and holidays to a residence where his family lives does not regularly commute from that residence. *Mitchell J. Schutz*, GSBCA 15521-RELO, 01-2 BCA ¶ 31,461; *Morell; Ezzat Asaad, M.D.*, GSBCA 14484-RELO, 98-1 BCA ¶ 29,667; *David M. Whetsell*, GSBCA 14089-RELO, 98-1 BCA ¶ 29,610; *Malcolm L. Jowers*, GSBCA 13727-RELO, 97-1 BCA ¶ 28,800. Claimant is in the same situation as the employee in *Amos F. Jones, Jr.*, GSBCA 16305-RELO, 04-2 BCA ¶ 32,677. In that case, the employee owned a home where his family lived in Perris, California, approximately 250 miles from his duty station at Nellis Air Force Base, Nevada, where he held a term assignment. He rented an apartment in Las Vegas where he lived during the week and returned home on weekends. He occasionally commuted on a daily basis from his home in California. He was offered a transfer to Randolph Air Force Base, Texas, and agreed to accept the transfer if he could be reimbursed real estate expenses incurred in the sale of his home in California. The agency thereafter denied reimbursement, even though the PCS orders authorized reimbursement of real estate expenses.

We held that the agency correctly denied reimbursement, stating:

Although Mr. Jones commuted weekly, and occasionally daily, from his home in California, it is clear that the bulk of Mr. Jones' daily commutes were made from the apartment in Las Vegas to Nellis. The regulations do not permit the Government to reimburse employees for the sale of a home from which the employee was not actually commuting regularly on a daily basis. Under the facts here, then, Mr. Jones plainly does not qualify for this benefit. *William T.*

² Claimant notes that the JTR authorizes reimbursement of expenses for the sale of a residence from which one "regularly commutes to and from work," and does not contain the phrase "on a daily basis" as does the FTR. Before the FTR was amended to include the phrase "on a daily basis," we consistently held that a regular commute is one that is conducted on a daily basis and applied this definition to employees governed by both the FTR and the JTR. See, e.g., *William D. Phillips*, GSBCA 15514-RELO, 02-1 BCA ¶ 31,697; *Paul Henderson*, GSBCA 15480-RELO, 01-2 BCA ¶ 31,501; *David Morell*, GSBCA 15229-RELO, 00-1 BCA ¶ 30,899; *Michael L. Martin*, GSBCA 13821-RELO, 97-2 BCA ¶ 29,142.

Orders, GSBCA 16095-RELO, 03-2 BCA ¶ 32,389; *accord Wayne A. Wetzel*, GSBCA 16017-RELO, 03-1 BCA ¶ 32,224; *Mitchell J. Schutz*, GSBCA 15521-RELO, 01-2 BCA ¶ 31,461; *Herman E. Harke*, GSBCA 15282-RELO, 00-2 BCA ¶ 31,017; *David Morrell*, GSBCA 15229-RELO, 00-1 BCA ¶ 30,899.

Mr. Jones argues that special consideration should be given to his claim because he relied to his detriment on the advice of agency employees and the denial of his claim has led to financial hardship. Although it is regrettable that Mr. Jones was given erroneous advice concerning his eligibility for this benefit in conjunction with his transfer to Kelly Air Force Base, the agency nonetheless lacks the authority to pay these expenses. *Orders; Albert R. Wilcox*, GSBCA 15776-RELO, 02-2 BCA ¶ 31,864. The statute and implementing regulations simply preclude payment of these expenses, even in those situations where both the employee and his agency advisors mistakenly believed the costs could be reimbursed.

04-2 BCA at 161,725.

Similarly, while claimant commuted weekly and occasionally daily (the last three work days at Kirtland), from his home in Texas to Kirtland, the bulk of claimant's daily commutes were made from the apartment in Albuquerque to Kirtland. Even though his travel orders authorized reimbursement of real estate expenses, and claimant made the agency aware of his intent to sell his residence in Texas believing he was eligible to receive reimbursement for expenses incurred in the sale, he is not entitled to reimbursement for expenses incurred in the sale of his home in Texas as he did not commute from there on a daily basis. The agency's determination to deny reimbursement was correct.

Decision

The claim is denied.

ALLAN H. GOODMAN
Board Judge