

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

November 7, 2006

GSBCA 16954-RELO

In the Matter of ROBERT G. DUARTE

Robert G. Duarte, Helendale, CA, Claimant.

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

DeGRAFF, Board Judge.

Robert G. Duarte is a civilian employee of the Department of Defense (DoD) and in early 2006, DoD transferred him from a duty station in Alabama to one in California. Mr. Duarte's wife, his adult daughter, and his daughter's two children accompanied him when he transferred. DoD decided that Mr. Duarte's daughter and his two grandchildren were not his dependents and did not reimburse him for the expenses he claimed in connection with their move to his new duty station. Mr. Duarte asks us to review DoD's decision.

DoD's regulations permit it to reimburse relocation expenses incurred by transferred employees and their dependents. Joint Travel Regulations (JTR) C5372-A.2, C5392-B, C7000. The regulations define "dependents" as, among others, children of any age who are physically or mentally incapable of self-support and grandchildren if they are under the legal guardianship of the employee. JTR app. A. In order to be reimbursed for the expenses he claims, Mr. Duarte has the burden of establishing he meets these requirements. 48 CFR 6104.1(c) (2005).

Mr. Duarte says his daughter has emotional issues for which she receives treatment and takes medication, and he explains that she lives with him and his wife half of the time. In Mr. Duarte's view, his daughter is incapable of supporting herself due to her emotional state. The facts presented by Mr. Duarte do not convince us that his daughter is his dependent for purposes of reimbursing relocation expenses. Although Mr. Duarte believes she is mentally incapable of self-support, only someone who is medically qualified to evaluate her mental condition would be able to say whether, when Mr. Duarte transferred to California, his daughter lacked the mental capacity to support herself. We have no doubt that Mr. Duarte has described her circumstances accurately. However, his description does not take the place of the opinion of a qualified medical professional. If Mr. Duarte is able to present such an opinion to DoD, then DoD can reconsider whether it ought to reimburse the relocation expenses he incurred in connection with his daughter's move to California.

Several months before Mr. Duarte left Alabama, the Madison County Department of Human Resources gave him and his wife physical custody of their two grandchildren. However, according to a written statement provided by the Department of Human Resources, the grandchildren remained in the legal custody of their mother. Relying upon this statement, DoD determined that Mr. Duarte's grandchildren were not his dependents for purposes of reimbursing relocation expenses because he was not their legal guardian. Mr. Duarte questions how DoD knows what the term "legal guardianship" means since it is not defined in the JTR. He says it was inappropriate for DoD to rely upon Alabama law regarding legal and physical custody. As our precedent makes clear, DoD appropriately looked to the law as it exists in Alabama when it determined whether Mr. Duarte was the legal guardian of his grandchildren, because domestic relations are generally controlled by state law. *Joseph A. Soto*, GSBCA 15023-RELO, 00-1 BCA ¶ 30,609. Although Mr. Duarte has physical custody of his two grandchildren, certain procedures must be followed in Alabama in order to become the legal guardian of a child, Ala.Code § 26-2A-70 (1975), and no such procedures were initiated in order to make Mr. Duarte the legal guardian of his grandchildren. Therefore, DoD correctly determined Mr. Duarte was not the legal guardian of his grandchildren for purposes of reimbursing relocation expenses.

Mr. Duarte says someone in DoD promised his relocation expenses would be reimbursed. Assuming someone in DoD promised the expenses he claimed in connection with his daughter and his grandchildren would be reimbursed, this is unfortunate. However, no DoD employee has the authority to promise to reimburse expenses in a manner contrary to DoD's regulations. *Joel Williams*, GSBCA 16437-RELO, 04-2 BCA ¶ 32,769. Mr. Duarte also says someone in DoD suggested he could be reimbursed if he had obtained legal custody of his grandchildren after he transferred. This is not correct. Mr. Duarte's eligibility for reimbursement of relocation expenses is determined as of the date he reported for duty at his new duty station. If he were to obtain legal custody of his grandchildren at

some future time, this would not alter DoD's decision regarding his claim. 41 CFR 302-2.3 (2005).

The claim is denied.

MARTHA H. DeGRAFF
Board Judge