

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

February 2, 2001

GSBCA 15237-RELO

In the Matter of EDWARD J. NANARTOWICH

Edward J. Nanartowich, Williamsburg, VA, Claimant.

Judy Hughes, Travel Policy, Defense Finance and Accounting Service, Columbus, Ohio, appearing for Department of Defense.

NEILL, Board Judge.

Claimant, Captain Edward J. Nanartowich, is a civilian employee of the Military Sealift Command (MSC). He serves as the master of various ships operated by MSC. In May 1996, claimant received permanent change of station (PCS) orders transferring him from Norfolk, Virginia, to London, England. In November of the same year he sold his residence in Norfolk. Thereafter he sought reimbursement for certain real estate expenses incurred in connection with that sale. The claim was denied by MSC but was later forwarded as a disputed claim to the Defense Finance and Accounting Service (DFAS). When DFAS replied that it could find no basis for overturning the MSC denial of the claim, MSC, on the claimant's behalf, asked that the claim be reviewed by this Board as well. Captain Nanartowich, at our invitation, has supplemented the agency's submission with comments of his own regarding the claim. Based upon the record now before us, we conclude that the determinations of both MSC and DFAS that the claim cannot be paid are indeed correct.

Background

A copy of the PCS orders transferring Captain Nanartowich to London shows that the block on these orders indicating that real estate expenses would be authorized was checked. Alongside the block is a typewritten note which appears to read "(U.S. only)." Claimant contends that he understood this to mean that he was to be paid for selling his house in Norfolk prior to executing PCS orders to England.

Prior to his departure for England, Captain Nanartowich listed his house for sale, and in November of the same year it was sold. He subsequently sought reimbursement for various expenses associated with the sale. This claim was ultimately rejected by MSC on the ground that the claimant did not qualify for reimbursement. MSC explained to Captain Nanartowich that, to qualify, a claimant is expected to retain his or her residence at the prior

non-foreign PDS until after the completion of the tour of duty at the foreign PDS and until after official notification that he or she will not be returning to that same non-foreign PDS.

It would appear that when Captain Nanartowich was transferred to England in 1996, he expected that his next assignment in the United States would be to MSC headquarters in Bayonne, New Jersey. In 1997, however, MSC relocated to Norfolk, Virginia. Thereafter, when Captain Nanartowich returned to the United States, he came back to the Norfolk area because his command had relocated to that city.

Discussion

A federal employee normally is not expected to sell the residence at or near the non-foreign PDS to which he or she was assigned when transferred to a PDS outside the United States. Rather, it is expected that the employee will retain the residence in anticipation of return to the same PDS. Only if and when the employee is officially notified at the close of the overseas tour that he or she will be returning to a different non-foreign PDS may the employee qualify for reimbursement of costs associated with the sale of this residence. These requirements are set out in statute (5 U.S.C. § 5724a(d) (Supp. IV 1998)), in the Federal Travel Regulation (41 CFR 302-6.1(g) (2000)) and in the Joint Travel Regulations (JTR) -- to which Captain Nanartowich is subject as a civilian employee of the Department of Defense (JTR C14000-D (May 1, 1999)).¹ We have addressed these requirements of statute and regulation on several occasions. E.g., Stephen W. Van Dyke, GSBCA 15422-RELO (Dec. 14, 2000); Pamela A. Mackenzie, GSBCA 15328-RELO (Oct. 12, 2000); Marilyn A. Whitworth, GSBCA 15174-RELO, 00-1 BCA ¶ 30,811; Johnnie M. Jones, GSBCA 15079-RELO, 00-1 BCA ¶ 30,710; Alfred Voelkelt, GSBCA 14889-RELO, 99-1 BCA ¶ 30,362; James E. Black, GSBCA 14548-RELO, 98-2 BCA ¶ 29,876; Harry T. Teraoka, GSBCA 13641-RELO, 97-1 BCA ¶ 28,796; Chesley E. Kimbrel, GSBCA 13680-RELO, 97-2 BCA ¶ 29,043 (1996).

The rule enunciated in statute and regulation and consistently upheld in our decisions is a reasonable one. Pending the employee's tour of duty overseas, both the Government and the employee keep their options open. Much can happen during the course of an employee's overseas tour -- as this claimant can himself attest so far as the relocation of MSC headquarters is concerned. Any decision regarding the sale of the residence at the old PDS is best put on hold.

Under the statutory and regulatory scheme in effect at the time of Captain Nanartowich's transfer, and still in effect today, he clearly is not entitled to the reimbursement he seeks. Perhaps he himself is aware of this fact when he writes in the comments which he submitted: "I am sure there is a regulation out there that will refute my claim, however it does absolutely no justice when my case is denied." Captain Nanartowich at the time of his transfer apparently believed that he had authorization to sell his house in

¹The statutory requirements in effect at the time Captain Nanartowich was transferred to England were essentially the same as those in effect at present. They were then found, however, in 5 U.S.C. § 5724a(a)(4)(A) (1994). The regulatory requirements were likewise basically the same and appeared in the same part of the regulations in which they can be found today.

Norfolk. Admittedly, his orders are hardly a study in clarity. Nevertheless, such an authorization, if given, was of no effect since it would be clearly contrary to statute and regulation. It is well established that the Government simply may not authorize the payment of money in violation of statute or regulation. Kevin S. Foster, GSBCA 13639-RELO, 97-1 BCA ¶ 28,688 (1996) (citing Office of Personnel Management v. Richmond, 496 U.S. 414 (1990); Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947)). Payment, in the absence of proper authorization, cannot be justified solely by the fact that a claimant may have relied in good faith on an improper authorization to his or her detriment. While it may seem inequitable that a claimant cannot be paid under these circumstances, it must be recognized that the overriding concern in such cases is the protection of the taxpayers' interest in not having unlawful disbursement made from public funds. See Patricia A. Tobin, GSBCA 14483, 98-1 BCA ¶ 29,663.

Accordingly, we affirm MSC's and DFAS's denial of Captain Nanartowich's claim.

EDWIN B. NEILL
Board Judge