

# Board of Contract Appeals

General Services Administration  
Washington, D.C. 20405

---

October 12, 2000

---

GSBCA 15328-RELO

In the Matter of PAMELA A. MACKENZIE

Pamela A. Mackenzie, Brussels, Belgium, Claimant.

Robert L. Donnelly, Deputy Chief of Staff, Plans, Programs and Budget, Defense Security Service, Alexandria, VA, appearing for Department of Defense.

**DANIELS**, Board Judge (Chairman).

The Defense Security Service transferred Pamela A. Mackenzie from Alexandria, Virginia, to Brussels, Belgium, in January 2000. The agency issued to Ms. Mackenzie travel orders which authorized reimbursement of real estate transaction expenses she might incur in connection with the move. Before leaving for Brussels, Ms. Mackenzie sold the house in which she lived at her old duty station. She then asked to be reimbursed for the expenses of the sale. The agency refused to make payment. The responsible official called his action "regrettabl[e]" and said that he had to take it because, he now realizes, the Department of Defense's Joint Travel Regulations require it.

Ms. Mackenzie asks the Board to direct the Defense Security Service to reimburse her for expenses she incurred in reliance on the agency's authorization and guidance. The agency agrees that it is responsible for the situation in which the employee finds herself. The Service recognizes that the Board has held that relocation benefits may only be paid consistent with the provisions of statute and regulation, and that payment may not be made simply because expenses were incurred in reliance on erroneous advice. The agency asks us to reconsider that holding and rule in the employee's favor.

We decline to modify our past holding.

The relevant law as to payment of real estate transaction expenses was written by the Congress, and it is clear: reimbursement of these expenses "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)(3) (Supp. IV 1998). (The

provision of the Joint Travel Regulations to which the Defense Security Service calls our attention, JTR C14001.2, reflects the statute's mandate.) Ms. Mackenzie sold her residence before receiving official notification that when her assignment overseas was complete, she would be transferred to a duty station in the United States other than the one from which she left. If we are to be faithful to the command of Congress, we must conclude that payment of the expenses of selling this house would be illegal. Marilyn A. Whitworth, GSBCA 15174-RELO, 00-1 BCA ¶ 30,811; James E. Black, GSBCA 14548-RELO, 98-2 BCA ¶ 29,876; Chesley E. Kimbrel, GSBCA 13680-RELO, 97-2 BCA ¶ 29,043 (1996).

It is, of course, always troubling to learn of situations in which employees have relied to their detriment on incorrect legal advice provided by agency officials. Each individual instance, like Ms. Mackenzie's, seems unfair to the affected employee. On the other hand,

an agency may not confer power upon itself. It literally has no power to act . . . unless and until Congress confers power upon it. . . . Allowing an agency to make a payment for a purpose not authorized by statute or regulation, . . . would violate the Appropriations Clause of the Constitution. U.S. Const. art. I, § 9, cl. 7 ("No money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law.").

Teresa M. Erickson, GSBCA 15210-RELO, 00-1 BCA ¶ 30,900 (quotation marks and some citations omitted).

We have previously explained:

In considering claims like this one, . . . the arbiter must balance the harm the employee would suffer if the claim were denied against the damage which would result to our system of government if federal officials were free to spend money in ways which are contrary to the strictures of statute and regulation. In making this balance, the Supreme Court has clearly come down on the side of protecting our system of government. We follow the Court in holding that although [the employee] has undeniably relied to his detriment on [his agency's] promises, he may not be reimbursed because the law prevents the agency from honoring commitments made in its name by officials who do not have the power to make them.

George S. Page, GSBCA 15114-RELO, 00-1 BCA ¶ 30,707 (1999); *see also, e.g.,* George W. Currie, GSBCA 15199-RELO, 00-1 BCA ¶ 30,814; Black; Kimbrel; Kevin S. Foster, GSBCA 13639, 97-1 BCA ¶ 28,688 (1996).

---

STEPHEN M. DANIELS  
Board Judge