

# Board of Contract Appeals

General Services Administration  
Washington, D.C. 20405

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August 8, 2000

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GSBCA 15339-RELO

In the Matter of JEFFREY R. JENKINS

Jeffrey R. Jenkins, Vicksburg, MS, Claimant.

Ann C. Ordes, Certifying Officer, National Finance Center, Department of Agriculture, New Orleans, LA, appearing for Department of Agriculture.

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

The Department of Agriculture issued to Jeffrey R. Jenkins travel orders which authorized expenditures for this employee's transfer of station from Tallulah, Louisiana, to St. Joseph, Louisiana. Later, Mr. Jenkins and his wife purchased a home in Vicksburg, Mississippi, and moved there from Tallulah. The employee asked the agency to reimburse him for expenses associated with this real estate transaction. He also asked to be paid a miscellaneous expense allowance. The agency refused to comply, and the employee has asked us to review its determination. We do not disturb the agency's decision.

Generally, when an agency transfers one of its employees in the interest of the Government from one permanent duty station to another, the agency, in accordance with regulatory prescriptions, is to reimburse the employee for various expenses he incurs in connection with the move. Real estate transaction costs are among these expenses. 5 U.S.C. § 5724a (Supp. IV 1998). As we have recently explained:

The purpose of the statute is "to help pay the cost of moving to the new place of employment." The statute is designed to authorize payment of expenses "incident to transfer from the old to the new station" so that "employees will not have to incur financial losses when transferred at the request of the Government." S. Rep. No. 89-1357, at 2-4 (1966), reprinted in 1966 U.S.C.C.A.N. 2565-67.

Paul W. Gard, Jr., GSBCA 15311-RELO (July 14, 2000).

Consistent with the intent of Congress, we have held that expenses associated with any purchase or sale of a residence by a transferred employee should be paid by the agency

only when the transaction is incident to the transfer. Whether a transaction meets this test is a question that arises most commonly when the change of station involves a move of relatively short distances. Menilao T. Dizon, GSBCA 15302-RELO (June 1, 2000); Vincent T. Arconati, Jr., GSBCA 14485-RELO, 98-1 BCA ¶ 29,735; David M. Whetsell, GSBCA 14089-RELO, 98-1 BCA 29,610. In deciding whether an employee's residence relocation is incident to a transfer, an agency is to consider such factors as (1) commuting time and distance between the employee's residence at the time of notification of transfer and his old and new posts of duty; (2) commuting time and distance between the employee's new residence and new post of duty; and (3) the relationship in date between the transfer and the residence move. Arconati; Lisa F. Pierce, GSBCA 14268-RELO, 98-1 BCA ¶ 29,510 (1997). Whether a relocation was incident to a transfer is to be decided on a case-by-case basis. It is a discretionary call on the part of the agency, so we will uphold the agency's determination unless it is arbitrary or capricious. James T. Abbott, GSBCA 15025-RELO (May 11, 2000); Pierce.

Prior to his reassignment to St. Joseph, Mr. Jenkins lived as well as worked in Tallulah. When he was transferred to St. Joseph, he and his wife looked for a home there, but could not find one suitable for their family of four. They retained an interest in moving from the house which they were renting in Tallulah, however, because that house was for sale. Ten months after the transfer, the Jenkinsons purchased their new residence in Vicksburg. Vicksburg was an attractive place for the family to live because Mrs. Jenkins works in the Vicksburg school system and the children go to school there. Apparently, Mr. Jenkins commuted to his new job in St. Joseph from Tallulah for the ten months the family remained in Tallulah, and from Vicksburg after the new home was purchased.

Tallulah is approximately thirty-five miles, or fifty minutes by car, north of St. Joseph. Mr. Jenkins maintains that his family's new home on the south side of Vicksburg is closer to St. Joseph than is Tallulah. This may well be true, but only as the crow flies. Because the Mississippi River separates the states of Mississippi and Louisiana, and there is only one bridge in the vicinity across the river, a car traveling between Vicksburg and St. Joseph must go by way of Tallulah, thirty miles (or forty minutes) west of Vicksburg.

The Department of Agriculture concluded, after reviewing these facts, that the purchase of the residence in Vicksburg was for the convenience of the Jenkins family and not incident to the agency's transfer of Mr. Jenkins from Tallulah to St. Joseph. We consider this determination to be reasonable. The family's move to Vicksburg allowed Mrs. Jenkins to work, and the children to attend school, in the community in which they lived. On the other hand, the move nearly doubled the time and distance of Mr. Jenkins's commute to and from work. In addition, the fact that Mr. Jenkins and his family remained in Tallulah for ten months after he was transferred to St. Joseph indicates that the employee considered the commute from Tallulah to St. Joseph tolerable and that any move from Tallulah was prompted by something other than his desire to live closer to his office. The fact that Mr. Jenkins and his wife looked for a home in St. Joseph but could not find one suitable for their family does show an interest in moving to the area of the employee's new office, but it is hardly sufficient to demonstrate that the agency's conclusion was wrong. Because that determination was neither arbitrary nor capricious, it must stand, and Mr. Jenkins's request for reimbursement of real estate transaction expenses associated with the purchase of the Vicksburg residence must be denied. See Whetsell.

A miscellaneous expense allowance is "for defraying various contingent costs associated with discontinuing residence at one location and establishing residence at a new location in connection with an authorized or approved permanent change of station." 41 CFR 302-3.1(a) (1998); see also 5 U.S.C. § 5724a(f). Because the Agriculture Department reasonably concluded that Mr. Jenkins's move to Vicksburg was not incident to his transfer to St. Joseph, it may not pay him a miscellaneous expense allowance, either.

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STEPHEN M. DANIELS  
Board Judge