

Board of Contract Appeals
General Services Administration
Washington, D.C. 20405

January 23, 2001

GSBCA 15378-RELO

In the Matter of KENNETH L. WOODWORTH

Kenneth L. Woodworth, Yokosuka, Japan, Claimant.

Joan Eggers, Chief, Employee Relations and Services Division, Department of the Navy, Yokosuka, Japan, appearing for Department of the Navy.

HYATT, Board Judge.

Claimant, Kenneth L. Woodworth, works for the United States Naval Ship Repair Facility in Yokosuka, Japan. Mr. Woodworth was transferred from Port Hueneme in Ventura, California, to Yokosuka, Japan, in August 1992. His travel orders did not authorize reimbursement of real estate transaction expenses when he was transferred. Claimant owns a home in Oxnard, California, and has been using a property management service to oversee the rental of his home while he is employed overseas. After learning that this cost may be reimbursable, in May 2000 Mr. Woodworth requested that the Navy pay for the cost of the property management services. The costs incurred for property management services from August 1992 through April 2000 totaled \$4733.49.¹ The Navy declined the

¹The amount claimed is broken down as follows:

August - December 1992	\$ 129.00
January - December 1993	\$ 648.00
January - December 1994	\$ 398.50
January - December 1995	\$ 630.00
January - December 1996	\$ 215.63
January - December 1997	\$ 711.18
January - December 1998	\$ 766.89
January - December 1999	\$ 919.17
January - April 2000	\$ 314.52

request, noting that the command had never paid for such services before. Mr. Woodworth has asked the Board to review this decision.

Discussion

In 1996, Congress enacted legislation giving agencies the authority, under regulations promulgated by the General Services Administration (GSA), to "pay to or on behalf of an employee who transfers in the interest of the Government, the expenses of property management services when the employee transfers to a post of duty outside of the United States." 5 U.S.C. § 5724a(e) (Supp. IV 1998). In March 1997, the Federal Travel Regulation (FTR) was amended to implement this authority. 41 CFR 302-15 (1997). The FTR states that the purpose of the allowance for property management services when authorized in connection with a transfer to a foreign post of duty is to relieve the employee of the costs of maintaining a home in the United States while stationed abroad. 41 CFR 302-15.2 (2000). Each agency should develop its own policies and procedures governing when property management services will be reimbursed. 41 CFR 302-15.70.

Subsequently, effective October 24, 1997, the Joint Travel Regulations (JTR), which supplement the FTR and apply to civilian employees of the Department of Defense, were revised to implement provisions permitting agencies to reimburse transferred employees the costs of retaining services to manage the rental of their residences at the old permanent duty station (PDS). JTR C15000, C15050. JTR C15050 provides that "payment for PM [property management] services may be authorized when an employee transfers in the interest of the Government to a permanent duty station in a foreign area." The JTR provisions are stated to be applicable to transfers occurring on or after October 24, 1997.

Although agencies are now permitted, but not required, to reimburse property management services fees for employees transferring overseas and maintaining a home in the United States, nothing in the statute or regulations would suggest that this benefit was intended to be offered retroactively. Moreover, legislative enactments and administrative rules are generally not construed to have retroactive application unless their language requires that result. See Herbert J. Ratzburg, GSBCA 15284-RELO, 00-2 BCA ¶ 31,063 (citing Bowen v. Georgetown University Hospital, 488 U.S. 204, 208 (1988)). Thus, the portion of Mr. Woodworth's claim for a property management allowance pertaining to the period from 1992 through October 1997 is clearly ineligible for reimbursement. Moreover, to be entitled to this benefit, the agency must have approved payment and included it as part of the service agreement entered into between the parties. This has not occurred here. Thus, to date, there is no basis for the agency to reimburse Mr. Woodworth for the expenses incurred for property management services. The FTR does not appear, however, to preclude the possibility that, if an agency considers an employee stationed overseas to qualify for the program, participation in the program could be approved at such time as a tour renewal agreement is entered into.²

²We note that Mr. Woodworth's command, in responding to this claim, asserted in the alternative that Mr. Woodworth is, in any event, ineligible for this benefit because he applied for and accepted this position primarily for his own convenience. Whether a transfer is in the interest of the Government or for the employee's benefit depends upon the facts and

CATHERINE B. HYATT
Board Judge

circumstances of the individual transfer. E.g., Quentin P. McColgin, GSBCA 14349-RELO, 98-1 BCA ¶ 29,599; Paul C. Martin, GSBCA 13722-RELO, 98-1 BCA ¶ 29,412 (1996). The record with respect to this issue is incomplete and we need not resolve it here.