

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

May 17, 2001

GSBCA 15403-RELO

In the Matter of NORMAN R. EVANS

Norman R. Evans, Clearfield, UT, Claimant.

Judy A. Baker, Deputy Chief, Civilian Personnel Division, Wright-Patterson Air Force Base, OH, appearing for Department of the Air Force.

NEILL, Board Judge.

Claimant, Mr. Norman R. Evans, is a civilian employee of the Department of the Air Force. He asks that we review his agency's denial of his claim for reimbursement of certain real estate expenses incurred in conjunction with the sale of his former home in Dayton, Ohio. We affirm the agency's denial.

Background

In January 2000, Mr. Evans, while employed at Wright-Patterson Air Force Base (AFB) in Ohio and living in nearby Dayton, Ohio, applied for a position of equipment specialist at Kelly AFB in Texas. He explains that this decision to apply for the position was prompted by a reduction in force at Wright-Patterson and the downgrading of his own position there.

The recruitment bulletin for the position at Kelly Air Force Base explained that the position in question was at the San Antonio Air Logistics Center at Kelly AFB but that, due to the 1995 Base Realignment and Closure Commission recommendations, the management mission of the organization at Kelly would be realigned to Hill AFB in Utah by September 23, 2000. As a result, the bulletin advised all applicants that one express condition of employment for this position at Kelly was that the individual selected be prepared sign an agreement to relocate to Hill AFB before entry on duty. Immediately after this provision, the bulletin reads: "PERMANENT CHANGE-OF-STATION (PCS) AND RELOCATION COSTS WILL NOT BE AUTHORIZED."

On February 7, 2000, Mr. Evans was offered the position at Kelly for which he had applied. No PCS expenses were authorized for this move, however. Mr. Evans was directed to report for duty at Kelly on March 13. He was also requested to sign the required agreement to relocate to Hill AFB at a future date. Among the provisions of this agreement

to relocate to Hill, which Mr. Evans signed, is one which stated that travel and transportation expenses for that relocation would not be paid by the Government.

In early May 2000, Mr. Evans was directed to report to Hill AFB on July 31. At the same time, he was also advised that PCS travel and transportation expenses for the transfer to Hill would be paid after all. The memorandum advising him of these facts also requested that he sign and return a copy of the same as an acknowledgment of the report date and of his acceptance of all terms and conditions related to his move from Kelly to Hill AFB. Mr. Evans signed and returned a copy of the memorandum as requested.

On August 22, 2000, Mr. Evans sold the home in which he had lived at Dayton, Ohio, before leaving Wright-Patterson AFB to accept his new position at Kelly AFB in Texas. He later submitted a claim for \$5886.33 in real estate costs incurred in connection with this sale. The claim was rejected on the ground that Mr. Evan's change of station from Wright-Patterson to Kelly AFB was a voluntary move and not pursuant to official PCS orders.

Discussion

Mr. Evans readily agrees that he was not authorized PCS expenses for his move from Wright-Patterson to Kelly AFB. Nevertheless, he contends that under the Federal Travel Regulation (FTR) he is entitled to reimbursement of real estate expenses incurred in connection with the sale of his residence in Dayton, because this is the residence in which he was living when he was first officially notified by competent authority of his eventual transfer to his new official duty station at Hill AFB. In his opinion, this made the immediate sale of his house in Dayton and transfer of his household goods to Texas less than practicable. He contends that, for this reason, he delayed selling his home in Dayton until after he received word of the precise date on which he was to report to Hill AFB and after he had formally agreed to the terms and conditions relating to that move.

The section of the FTR on which Mr. Evans relies appears in 41 CFR pt. 302-6 (1999). Pursuant to that part of the regulation a Government employee is to be reimbursed for certain expenses paid in connection with the sale of his or her residence at his or her old duty station provided certain conditions are met. The conditions of particular significance, so far as this case is concerned, are: (1) that the PCS be authorized or approved, (2) that both the old duty station and the new duty station be within the United States, (3) that the employee sign an agreement in writing to remain in the service of the Government for twelve months following the effective date of the transfer, (4) that the residence be one from which the employee regularly commutes to and from work, and (5) that the residence in question was the employee's residence at the time he or she was first officially notified by competent authority of his or her transfer to the new official station. FTR 302-6.1(a), (b), (d). The Joint Travel Regulations (JTR) which supplement the FTR with applicability to civilian employees of the Department of Defense, such as Mr. Evans, have substantially the same provision. See JTR C14000-A.

We also note that the relocation benefit of concern to the claimant here is subject to one additional condition of a general nature. It appears at the beginning of the chapter 302

of the FTR, which deals in its entirety with various relocation allowances for federal employees. Pursuant to FTR 302-1.3(a)(1)(i), relocation benefits generally are mandatory only where the employee's transfer is in the interest of the Government and not primarily for the convenience or benefit of the employee or at his or her request. A similar condition appears in JTR C4100-B.

Our major difficulty with Mr. Evans's claim is that it ignores the significance of his assignment to Kelly AFB in Texas. He appears to have merged his transfer to Kelly with his subsequent transfer to Hill AFB in Utah thus rendering his sojourn to Texas little more than a stop along the way. Unfortunately this is incorrect. When a Government employee claims relocation benefits and more than one transfer is involved, it is essential that each transfer and any benefits which may be associated with it be considered separately. See Linda L. Shaw, GSBCA 14977-RELO, 99-2 BCA ¶ 30,494.

Under the FTR, an official station or post of duty is where the employee regularly reports for duty. FTR 302-1.4(k). While in Dayton, Ohio, Mr. Evans was told that he had been selected for a position at Kelly AFB in Texas and was given a report date of March 13. This made Kelly his new duty station. After establishing himself at Kelly, he received official notice of his transfer to Hill AFB in Utah and was given a report date of July 31 for this new duty station.

Once one recognizes, as one must, that Kelly AFB in Texas was in fact the claimant's new duty station after his transfer from Wright-Patterson AFB in Ohio and his old duty station after his transfer to Hill AFB in Utah, it is clear that any claim for reimbursement of costs associated with sale of his house in Dayton, Ohio, must fail. First, since Mr. Evans's transfer from Wright-Patterson AFB to Kelly AFB was not in the interest of the Government but primarily for his own convenience or benefit, no PCS expenses were authorized. He, therefore, is clearly not entitled to the benefit he seeks based upon that move or transfer. Secondly, although his transfer from Kelly AFB to Hill AFB was in the interest of the Government, he still does not qualify for reimbursement of real estate expenses incurred in selling his house in Ohio because, under the applicable regulation, it most certainly was not the residence from which he regularly commuted while at his duty station at Kelly AFB.

In short, we find that the agency was correct in concluding that Mr. Evans is not entitled to the reimbursement he seeks. The agency determination is, therefore, affirmed and the claim denied.

EDWIN B. NEILL
Board Judge