

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

February 8, 2001

GSBCA 15411- RELO

In the Matter of DEBRA JO DYER

Debra Jo Dyer, Yucaipa, CA, Claimant.

Gail Diane Babbs, PCS Coordinator, VA Healthcare System San Diego, Department of Veterans Affairs, San Diego, CA, appearing for Department of Veterans Affairs.

HYATT, Board Judge.

Claimant, Debra Jo Dyer, a computer specialist, accepted a position with the Department of Veterans Affairs (VA) Medical Center in San Diego, California, after working for approximately five years in the private sector. The Board has been asked to review the VA's decision denying requested relocation benefits.

Background

At the time that Ms. Dyer accepted the position with the VA she owned a home in Yucaipa, California, some 120 miles and a two or more hour drive from San Diego. She was then employed by Science Applications International Corporation (SAIC) in San Diego and enjoyed a schedule under which she was permitted to telecommute two to three days per week and had very flexible hours. When she was required to be in San Diego for SAIC, she rented a single room to stay in. This room was much like a motel room in that she left no personal possessions in the room and it was available for use by others on nights when Ms. Dyer did not stay in San Diego.

When she interviewed for the position at the VA, Ms. Dyer informed the Chief Technology Officer that she lived approximately 120 miles from the VA facility. He told her that the position required the incumbent to be readily available during non-duty hours in the event of system emergencies and that full relocation expenses had been authorized. With the expectation that the cost of relocating to San Diego would be paid, Ms. Dyer accepted the position. It was only after she commenced working for the VA, in September 2000, that Ms. Dyer was informed that no relocation benefits would be available.

In informing Ms. Dyer that she is not eligible for relocation benefits the VA explained that her real estate transaction costs could not be reimbursed because after a five year break in service with the Federal Government she was regarded as a new appointee for the purpose of relocation benefits. In addition, the VA believed that, because claimant had a room in San Diego that she stayed in periodically while working for her previous employer, the home in Yucaipa was not the home she regularly commuted from when she accepted the position with the VA.

Discussion

By statute and regulation, only certain, limited expenses may be authorized in connection with the relocation of a new appointee.¹ Agencies are authorized to reimburse the travel and transportation expenses of a new appointee and his or her immediate family, the transportation expenses of household goods and personal effects, and the cost of shipping a privately owned motor vehicle, from the place of residence at the time of selection to the initial duty station. 5 U.S.C. § 5723 (Supp. IV 1998). The Federal Travel Regulation (FTR) similarly provides for the payment of the foregoing expenses, 41 CFR 302-1.10(a) (2000), and makes clear that other expenses, such as the cost of a house-hunting trip, subsistence while occupying temporary quarters, residence sale and purchase expenses, and lease-breaking costs may not be reimbursed for new appointees. 41 CFR 302-1.10(f); see Karen R. Brown, GSBCA 14871-RELO, 99-2 BCA ¶ 30,429; Charles G. Bakaly, III, GSBCA 14750-RELO, 99-1 BCA ¶ 30,249, reconsideration denied, 99-1 BCA ¶ 30,367. These regulations have the force and effect of law. Although it is unfortunate that Ms. Dyer received inaccurate advice about what relocation costs could be paid to her, the VA simply has no authority to reimburse Ms. Dyer for real estate expenses that may be incurred in selling her home in Yucaipa and purchasing another residence closer to San Diego.

The remaining issue is whether Ms. Dyer is eligible for reimbursement of the expenses of transporting her household goods from Yucaipa to San Diego should she decide to relocate closer to the VA facility. The VA is concerned that because she had the use of a room available in San Diego when she accepted the job, claimant's residence for purposes of recovering such expenses should be regarded to be San Diego. This concern is based on a line of cases that hold that an employee's place of residence is the location from which he or she regularly commuted to the old duty station. See, e.g., Richard S. Citron, GSBCA 15166-RELO, 00-1 BCA ¶ 30,788; Ezzat Assad, GSBCA 14484-RELO, 98-1 BCA ¶ 29,667; Malcolm L. Jowers, GSBCA 13727-RELO, 97-1 BCA ¶ 28,800.

Ms. Dyer has explained that while she uses this room more regularly now that she works at the VA, this is because her schedule is much less flexible than it was at SAIC. While employed at SAIC, Ms. Dyer was permitted to telecommute two to three days per

¹Under the applicable regulations, new employees are defined as including not only individuals when first appointed to government service but also individuals appointed after a break in service. An exception to this rule exists for individuals who resume government service after a break in service attributable to a transfer of function or reduction in force. 41 CFR 302-1.10(a). There is no indication in the record that this exception would apply to claimant. See Wendy Castineira, GSBCA 15092-RELO, 00-1 BCA ¶ 30,740 (1999).

week and was in San Diego a few days per week as her projects required. At the VA, Ms. Dyer is not able to telecommute and must work at least a four day week with a compressed work schedule. She is also required to be there during off-hours and on weekends to perform maintenance when necessary. Claimant was hired with the expectation that she would maintain a permanent residence in San Diego because of the need for her to be readily available on weekends and after hours on weekdays to address computer system emergencies, which could have an adverse effect on medical center operations.

In this case, while employed at SAIC, Ms. Dyer worked in Yucaipa at least as much of the time as she worked in San Diego. Thus, it is not entirely accurate to find that she "regularly commuted" from the rented room while she was employed by SAIC. In essence, she had two places of employment, and did her best to minimize the time spent in the rented room because she regarded her home in Yucaipa, where she maintains all of her possessions and pets, to be her primary residence. These facts are somewhat analogous to the situation in Will C. LaVeille, GSBCA 14070-RELO, 97-2 BCA ¶ 29,139, in which the employee owned a home some 130 miles distant from his workplace. Although he generally drove back and forth, he maintained a rented room close by to his place of employment and used it when inclement weather or his work schedule made the commute to his home infeasible. Ms. Dyer did the same while employed by SAIC -- she used the room in San Diego much the way a traveler would use a hotel room and stayed there only as her schedule required -- otherwise she stayed and worked in Yucaipa. Under these circumstances, should claimant move closer to San Diego, the reimbursement of her moving expenses would be proper as incident to the acceptance of her new appointment.

CATHERINE B. HYATT
Board Judge