

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

October 16, 2001

GSBCA 15431-RELO

In the Matter of MARLENE LEWIS

Marlene Lewis, Hanover, MD, Claimant.

David M. England, Office of General Counsel, Defense Commissary Agency, Fort Lee, VA, appearing for Defense Commissary Agency.

WILLIAMS, Board Judge.

Claimant, Marlene Lewis, formerly employed as a financial analyst with the Defense Commissary Agency (DeCA), seeks \$9765.27 in real estate expenses she incurred in conjunction with her purchase of a home in Hanover, Maryland, upon her return from an overseas tour of duty.

Background

Several years ago, claimant had a permanent change of station (PCS) from Fort Lee, Virginia, to Germany. During her tour of duty in Europe, her position at Fort Lee was abolished. When she chose to exercise her return rights, a position was created for her at Fort Lee as an operational financial analyst. At claimant's request, she was assigned "a rotational assignment" in the Pentagon as part of Defense Leadership Management Program training.

On April 26, 2000, the day before claimant's PCS orders were issued, she was advised that because she was returning to her former permanent duty station, she was not authorized any real estate reimbursement expenses. She was authorized temporary quarters subsistence expenses (TQSE) and miscellaneous expenses, and her household goods were shipped at Government expense to the vicinity of Arlington, Virginia. Nonetheless, claimant's travel orders, issued on April 27, 2000, erroneously reported her new permanent duty station as the Pentagon and authorized real estate expenses.

Ms. Lewis was assigned as a budget analyst in the Office of the Assistant Secretary of the Navy in Washington, D.C., on a rotational assignment for twelve consecutive months beginning on July 1, 2000. On July 13, 2000, claimant was issued a notification of personnel

action, Standard Form (SF) 50, indicating that her duty station was Arlington, Virginia. On December 12, 2000, claimant was issued a corrected SF-50 indicating that her duty station was Fort Lee, Virginia. Fort Lee is approximately 130 miles from the Pentagon.

Claimant entered into an agreement of sale with Patriot Homes regarding the purchase of her new home. Under this agreement, Patriot Homes agreed to contribute up to \$8000 to be used toward her discount points or closing costs if she retained Heritage Mortgage as her lender. Claimant did retain Heritage Mortgage, and her settlement statement reflects that she actually received a closing cost credit in the amount of \$7453.31. Claimant has not explained what the \$9765.27 claimed for real estate expenses represents.

In a subsequent appeal filed with this Board, Ms. Lewis admits that she was permanently assigned to the Defense Commissary Agency at Fort Lee.

Discussion

The agency correctly denied Ms. Lewis' claim. Section 5724a(d) of title 5 of the United States Code provides in pertinent part as follows:

[A]n agency shall pay [expenses required to be paid in connection with the purchase of a residence at the new official station] to or on behalf of an employee who transfers in the interest of the Government from a post of duty located outside the United States to an official station within the United States (other than the official station within the United States from which the employee was transferred when assigned to the foreign tour of duty).

5 U.S.C. § 5724a(d)(2) (Supp. V 1999).

As we recognized in David A. Bay, GSBCA 14552-RELO, 98-2 BCA ¶ 29,915, the statute prohibits agencies from reimbursing an employee for the costs incurred in connection with the purchase of a residence at his new duty station where the employee has been transferred from a post overseas back to the same place in the United States from which he was transferred. See Frederick J. Whitney, GSBCA 15179-RELO, 00-1 BCA ¶ 30,753 (employee who returned from Saudi Arabia to same duty station he left is not entitled to real estate expenses). Both the Federal Travel Regulation (FTR), which directly implements the above-quoted statute, and the Joint Travel Regulations (JTR), which supplement the FTR for civilian employees of the Department of Defense, reflect the statutory prohibition. 41 CFR 302-6.1(g) (1999); JTR C14000-C. Neither the statute nor the regulations make an exception for employees, such as Ms. Lewis, who are transferred back to the original duty station but then immediately commence a rotational assignment at a different location. The fact remains that Ms. Lewis was transferred from Germany back to her original duty station at Fort Lee, and there is no legal basis for reimbursing real estate expenses for either that transfer or her rotational assignment.

The fact that claimant's travel orders erroneously authorized reimbursement of these expenses does not help her. It is well established that travel orders which erroneously authorize relocation expenses to which a new employee is not entitled cannot create a right to reimbursement in excess of the statutory and regulatory entitlements. Wendy Castinera, GSBCA 15092-RELO, 00-1 BCA ¶ 30,740; William Archilla, GSBCA 13878-RELO,

97-1 BCA ¶ 28,799. This is true regardless of whether the employee relied to his or her detriment on the erroneous orders. Id.

Decision

The claim is denied.

MARY ELLEN COSTER WILLIAMS
Board Judge