

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

March 23, 2001

GSBCA 15466-RELO

In the Matter of BRENT A. MYERS

Brent A. Myers, Tooele, UT, Claimant.

Rickie P. Cannon, Acting Chief, Policy and Program Development Division, Manpower and Reserve Affairs, Office of Assistant Secretary of the Army, Department of the Army, Alexandria, VA, appearing for Department of the Army.

DeGRAFF, Board Judge.

In 1999, Brent A. Myers was a civilian employee of the Department of Defense (DoD). His permanent duty station was Helena, Montana and he owned a house there from which he regularly commuted to work. In July, DoD recruited Mr. Myers for a fourteen-month long training program in McAlester, Oklahoma. DoD explained to Mr. Myers that he would be reimbursed for traveling to Oklahoma and for moving and temporarily storing his household goods. DoD also told Mr. Myers that after he completed the training program and was transferred to a new permanent duty station, he would receive the relocation benefits that were available to transferred employees.

According to the regulations in effect when Mr. Myers was selected for his training program, his permanent duty station remained in Montana, even though he lived in Oklahoma while attending the training program. The training location in Oklahoma was considered a temporary duty station. The regulations explained that after Mr. Myers successfully completed the training program, agreed to remain in Government service for a required period of time, and was assigned to a new permanent duty station, DoD could then authorize him to receive the benefits available to employees who were transferred from one permanent duty station to another. Joint Travel Regulations (JTR) C4400 (footnote 1), C4500A, C4500B, C4500C (May 1, 1999).

In October 2000, Mr. Myers successfully completed the training program in Oklahoma and DoD transferred him to a new permanent duty station in Tooele, Utah.¹ In connection with the transfer, DoD issued a travel authorization that stated, "Relocation services authorized in lieu of real estate expenses at old duty station." According to the regulations in effect in October 2000, relocation services could be provided as a substitute for reimbursement of residence sale transaction expenses and included things such as arranging for the purchase of a transferred employee's residence at the old permanent duty station, home marketing assistance, and mortgage finding assistance. 41 CFR 302-12.3 (2000); JTR C15000 (Apr. 1, 1999).² Employees were eligible for relocation services if they met the requirements for reimbursement of residence sale transaction expenses, including the requirement that the employee must have regularly commuted to work from the residence being sold at the old duty station. 41 CFR 302-6.1, -1.4(k), -12.102.

On October 27, 2000, DoD told Mr. Myers that he was not eligible for relocation services in connection with his house at his old duty station in Montana because for the past fourteen months he had not been regularly commuting to work from that residence. DoD asks us whether it correctly decided to deny Mr. Myers's request for relocation benefits. We conclude that DoD's decision was not correct.

The purpose of the regulation that requires the employee to commute regularly from the residence being sold at the old duty station is to insure that it is, in fact, the residence that the employee is occupying at the time of the transfer. The regulation is not meant to penalize an employee who is prevented by an act of his employer from fulfilling the regulation's requirement, and it would be unreasonable to read the regulation as imposing such a penalty. The General Accounting Office, which resolved relocation claims until mid-1996, decided not to apply similar regulations so as to penalize employees who were not residing in their residences at their old duty stations due to Government training or travel requirements. 64 Comp. Gen. 268 (1985) (and cases cited therein). See also Richard S. Citron, GSBCA 15166-RELO, 00-1 BCA ¶ 30,788.

DoD does not dispute that Mr. Myers regularly commuted from his house in Montana to his duty station before he went to Oklahoma for training. His house in Montana would have been his residence at the time of his transfer to Utah, but for the fact that in the interest of the Government, he had been in Oklahoma for the past fourteen months attending a training program. It is not reasonable to read the regulation in a manner that penalizes Mr. Myers for not regularly commuting from his house in Montana at the time of his transfer to Utah. If Mr. Myers is otherwise eligible for relocation services or reimbursement of real estate transaction expenses, he can receive those services or that reimbursement even though he was not regularly commuting from his house in Montana when he was transferred to his new permanent duty station in Utah.

¹ We assume that Mr. Myers agreed to remain in Government service for the required period of time. DoD has not said otherwise.

² The regulations also provided that DoD was supposed to give Mr. Myers the opportunity to reject the offer to use relocation services. JTR C15003. We assume that DoD complied with this requirement.

MARTHA H. DeGRAFF
Board Judge