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

March 7, 2001

GSBCA 15484-RELO

In the Matter of JOHN W. GRAY

John W. Gray, Bel Air, MD, Claimant.

Thomas A. Golden, Deputy Director for Finance, Defense Finance and Accounting Service, Rock Island Operating Location, Rock Island, IL, appearing for Department of the Army.

GOODMAN, Board Judge.

Claimant, John W. Gray, is a civilian employee of the Department of the Army. He has requested that this Board review a decision by the agency to deny reimbursement of costs incurred in the sale of his residence.

Factual Background

Claimant is a Quality Assurance Specialist in the Quality Assurance Specialist Ammunition Surveillance (QASAS) program. In October 1998, claimant received travel orders for a permanent change of station (PCS) from his duty station in Rock Island Arsenal, Illinois, to his new duty station in Germany. Before departing for Germany, claimant sold his residence in Iowa, just across the Mississippi River from the arsenal. In February 2000, claimant again accomplished a PCS, this time from Germany to Aberdeen Proving Ground, Maryland. His travel orders indicate that real estate expenses were not authorized for reimbursement on his move orders to Germany, but were authorized on his move to Maryland. When he submitted a voucher for reimbursement for real estate expenses incurred in the sale of his residence in Iowa in 1998, the Defense Finance and Accounting Service determined that such costs could not be reimbursed. Claimant has asked this Board to review the agency's decision to deny reimbursement.

Discussion

Statute and regulation are clear on the matter at issue: Despite the authorization for reimbursement of real estate expenses, the Army may not reimburse claimant for the costs of selling his former home because that sale occurred before he was officially notified that his return to the United States would be to an official station different from the one from which he was transferred when assigned to his foreign post. The rule disallowing costs of

sales which occur before an employee receives such official notification is enunciated in statute, 5 U.S.C. § 5724a(d)(3) (Supp. III 1997); the Federal Travel Regulation, which applies to all federal civilian employees, 41 CFR 302-6.1(g)(2) (1998); and the Joint Travel Regulations (JTR), which apply to civilian employees of the Department of Defense, JTR C14000-D.1, C14000-D.2 (Mar. 1, 1998).[1]

Claimant says that when he left his duty station in Illinois, he sold his residence because he did not expect to return there. He states that the memorandum which he received setting forth his PCS:

> clearly states that I have re-employment rights with the QASAS program. Unlike the vast majority of DOD civilians who apply for employment OCONUS [outside the continental United States], I did not have re-employment rights to my previous CONUS PDS [permanent duty station]. Additionally, as a member of the QASAS career program I am subject to mandatory mobility and directed placement. From 1985-2000, 96% of the QASAS careerists who were moved OCONUS did not return to their previous CONUS PDS. By inference, I feel I was correct to believe that I would not be returning to Rock Island Arsenal.

In Marilyn A. Whitworth, GSBCA 15174-RELO, 00-1 BCA ¶ 30,811, the claimant was also a Quality Assurance Specialist in the QASAS program. Like claimant in the instant case, she sold her home at her old duty station before being officially notified that her return to the United States would be to an official station different from the one from which she was transferred when assigned to her foreign post. Like claimant in the instant case, she stated that she had an expectation that she would not be returning to her former PDS because her re-employment rights were with the QASAS program and not with her PDS; after each of her two previous overseas tours, she had been reassigned to a duty station different from her previous United States station; and her former PDS was on the list of bases proposed for realignment or closure at the time she went to Germany.

This Board, in upholding the agency's determination not to reimburse claimant, held:

> These are good reasons for her expectation, but the prospect of an event occurring -- even the very likely prospect of an event occurring -- is not official notification that the event will occur. That notification -- a necessary prerequisite for reimbursement of the costs of selling the Nevada residence -- was not forthcoming until well after the home had been sold. See Johnnie M. Jones, GSBCA 15079-RELO [00-1 BCA ¶ 30,710 (1999)] (agency advice as to "negative outlook" for return to former station is not official notification that

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[1] We cite here to the statute and regulation which were in effect on the effective date of claimant's transfer to Germany. See 41 CFR 302-1.3(d) (1995 & 2000). The rule stated here remains in effect. It is now codified at 5 U.S.C. §5724a(d)(3) (Supp. V 1999) (referencing id. § 5724a(d)(2)); 41CFR 302-6.1(g)(2) (2000); and JTR C14000-D.2 (Apr. 1, 2000).

return to United States will be to official station different from the one from which employee was transferred when assigned to foreign post); Alfred Voelkelt, GSBCA 14889-RELO, 99-1 BCA ¶ 30,362 (inclusion of depot on base realignment and closure list insufficient to constitute official notification); Harry T. Teraoka, GSBCA 13641-RELO, 97-1 BCA ¶ 28,796 (lack of return rights to United States station from which transferred overseas not official notification that employee would not be returning to that location).

The fact that the agency issued travel orders which authorized reimbursement of real estate transaction expenses Ms. Whitworth might incur in leaving the Sierra Army Depot for Germany does not help the claimant. For an agency to tell an employee that she is eligible for reimbursement of certain expenses, when the law prevents payment of those costs, is always regrettable and may sometimes mislead the employee into taking actions which are financially detrimental. Nevertheless, as we have explained:

> In considering claims like this one, . . . the arbiter must balance the harm the employee would suffer if the claim were denied against the damage which would result to our system of government if federal officials were free to spend money in ways which are contrary to the strictures of statute and regulation. In making this balance, the Supreme Court has clearly come down on the side of protecting our system of government. We follow the Court in holding that although [the employee] has undeniably relied to his detriment on [the agency's] promises, he may not be reimbursed because the law prevents the agency from honoring commitments made in its name by officials who do not have the power to make them. George S. Page, GSBCA 15114-RELO [00-1 BCA ¶ 30,707 (1999)] (referencing Office of Personnel Management v. Richmond, 496 U.S. 414 (1990); Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947)); see also James E. Black, GSBCA 14548-RELO, 98-2 BCA ¶ 29,876; Chesley E. Kimbrel, GSBCA 13680-RELO, 97-2 BCA ¶ 29,043 (1996).

00-1 BCA at 152,105.

The Whitworth decision is directly applicable to the instant case. While claimant may have expected that he would not return to his former PDS, he sold his residence before official notification that he would not be returning there, and accordingly may not be reimbursed for real estate expenses incurred in the sale of his residence, even if his travel orders authorized reimbursement of such expenses.

Accordingly, the agency correctly denied reimbursement.

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ALLAN H. GOODMAN
Board Judge