

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

April 18, 2001

GSBCA 15504-RELO

In the Matter of MARK H. SWENSON

Mark H. Swenson, Lexington Park, MD, Claimant.

Natalie Rotz, Travel Office, Naval Facilities Engineering Command, Norfolk, VA,
appearing for Department of the Navy.

DANIELS, Board Judge (Chairman).

When an employee is transferred in the interest of the Government from a duty station outside the United States to one within this country, he is eligible for reimbursement of expenses he incurs in selling his residence at his previous United States post and buying a home at his new one -- but only under certain circumstances. Congress has mandated that reimbursement "shall not be allowed for any sale (or settlement of an unexpired lease) or purchase transaction that occurs prior to official notification that the employee's return to the United States would be to an official station other than the official station from which the employee was transferred when assigned to the post of duty outside the United States." 5 U.S.C. § 5724a(d)(3) (Supp. V 1999).

Mark H. Swenson, an employee of the Department of the Navy, contends that this limitation is no bar to his agency's reimbursing him for expenses he incurred in selling his residence. Mr. Swenson was transferred in 1996 from Silver Spring, Maryland, to Yokosuka, Japan, and again in 1999 from Yokosuka to Patuxent River, Maryland. Silver Spring and Patuxent River are roughly seventy-five miles apart. A few months after the first move, he and his wife sold the home from which he commuted to Silver Spring. After the second move, Mr. Swenson asked the Navy to pay for the costs of selling that house. According to the employee, the fact that he had no return rights to his position in Silver Spring when he was transferred to Japan constituted official notification that his return to the United States would be to a different official station. The Navy disagrees.

The Navy is correct. The controlling statute, in effect since 1987, is based on the expectation that an employee transferred to a post overseas will retain his United States residence during his duty abroad, so that if, upon return to this country, he is again assigned to work at a place within commuting distance of that residence, he will be able to live there.

Edward J. Nanartowich, GSBCA 15237-RELO (Feb. 2, 2001).¹ An absence of return rights simply means that the employee is not guaranteed reassignment to a particular place; it does not mean that he is precluded from being sent there. Thus, even without return rights, an employee might, when sent back to this country, be reassigned to a place within commuting distance of the old residence. Robert J. Wright, GSBCA 15399-RELO (Mar. 7, 2001); John W. McCollum, GSBCA 13671-RELO, 97-1 BCA ¶ 28,863; Harry T. Teraoka, GSBCA 13641-RELO, 97-1 BCA ¶ 28,796. Reimbursement of expenses incurred in selling a residence at the old duty station is permissible only if the sale occurs after employee has been definitively notified that he will be sent to a post elsewhere. Marilyn A. Whitworth, GSBCA 15174-RELO, 00-1 BCA ¶ 30,811.

Mr. Swenson was not officially notified until 1999 that when transferred back to the United States, he would not be posted to a location within commuting distance of the residence from which he commuted to his previous duty station in this country. He had sold the house three years earlier. Under applicable statute, his claim must therefore be denied.

STEPHEN M. DANIELS
Board Judge

¹At the time of Mr. Swenson's assignment overseas, like Mr. Nanartowich's, the law was set out at 5 U.S.C. § 5724a(d)(4)(A) (1994). Although this statute has been rewritten since 1996, the provision at issue in this case remains substantively intact.