

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

March 9, 2001

GSBCA 15516-RELO

In the Matter of JOHN K. MIDDAUGH

John K. Middaugh, Douglasville, GA, Claimant.

Maj. Matthew W. Parsons, JA, Command Judge Advocate, United States Army Reserve Command, Fort McCoy, WI, appearing for Department of the Army.

DANIELS, Board Judge (Chairman).

John K. Middaugh, a civilian employee of the Department of the Army, has requested that an exception be made to application of a law which denies him reimbursement of expenses he incurred shortly after relocating from Washington State to Japan.

Mr. Middaugh's transfer occurred in September 1996. At the time, he had recently placed his wife, who had suffered a thoroughly debilitating stroke from which recovery was said to be impossible, in a health care facility. The Middaughs had agreed to divorce, and the final decree dissolving their marriage was issued in October. The decree stipulated that their home in Washington State be immediately listed for sale, with half the proceeds of sale going to Mr. Middaugh and the other half going to a trust established for the benefit of the former Mrs. Middaugh. The home was sold in December 1996, allegedly at far below market value.

The Army transferred Mr. Middaugh again in December 1999, this time from Japan to Georgia. During 2000, he asked the Army to reimburse him for the expenses he incurred in selling his house in Washington State, and the agency denied reimbursement. The Army based its determination on a provision of the Department of Defense's Joint Travel Regulations (JTR), which states, "Expenses incident to a sale . . . transaction that occurs prior to the employee being officially notified (ordinarily in the form of PCS [permanent change of station] orders) that instead of returning to the former nonforeign area PDS [permanent duty station], reassignment/transfer is to be to a different nonforeign PDS may not be reimbursed." JTR C14000-C.4 (Apr. 1, 2000).

Mr. Middaugh maintains, in submitting his claim to us, that because the sale of his former residence resulted from extraordinary circumstances which were not contemplated

by the authors of the regulatory provision cited by the Army, an exception to that rule should be made for him. He asks that the Government reimburse him for half of the cost he incurred in selling the house and, if possible, that the Government also reimburse the trust for the benefit of his former wife for the half of the sales costs paid by that trust.

As Mr. Middaugh recognizes, the law on this matter clearly prohibits reimbursement. The JTR provision cited by the Army is based on statute. Section 5724a(d)(3) of title 5, United States Code, states that reimbursement of real estate transaction expenses incurred by an employee transferred to a location outside the United States "shall not be allowed for any sale . . . 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). In substance, this provision has been in effect since 1987. Robert J. Wright, GSBCA 15399-RELO (Mar. 7, 2001). We have consistently applied the law to prohibit reimbursement of expenses associated with home sales which occurred prior to the necessary notification. E.g., Edward J. Nanartowich, GSBCA 15237-RELO (Feb. 2, 2001); Marilyn A. Whitworth, GSBCA 15174-RELO, 00-1 BCA ¶ 30,811 (and cases cited therein).

This Board has been delegated authority by the Administrator of General Services to settle claims involving expenses incurred by federal civilian employees for official travel and transportation, and for relocation expenses incident to transfers of official duty station. See 31 U.S.C. § 3702(a)(3) (Supp. IV 1998). Our authority extends, however, only to settlement in accordance with existing statutes and regulations. We have no authority to exercise equitable powers to grant claims which must be denied under those laws. Jean M. Everest, GSBCA 13804-RELO, 97-2 BCA ¶ 29,308; Joseph A. Curtis, GSBCA 13823-RELO, 97-1 BCA ¶ 28,935; William Archilla, GSBCA 13878-RELO, 97-1 BCA ¶ 28,799.

Two avenues are open to Mr. Middaugh for relief which is not permissible under existing law. One is Congressional enactment of special legislation. The Administrator of General Services may recommend such action to the Congress under authority granted in 31 U.S.C. § 3702(d). Everest; Curtis; Archilla.

The other avenue open to Mr. Middaugh is application to the General Services Administration's (GSA's) Deputy Associate Administrator for the Office of Transportation and Personal Property. Section 5 of the Travel and Transportation Reform Act of 1998, Pub. L. No. 105-264, 112 Stat. 2350, 2354-56 (1998), authorizes the Administrator of General Services to establish test programs, each for a period not exceeding twenty-four months, "to enhance cost savings or other efficiencies that accrue to the Government" regarding employee travel and relocation expenses. Under such a program, "an agency may pay through the proper disbursing official . . . any necessary travel [or relocation] expenses in lieu of any payment otherwise authorized or required under [relevant statute]." On April 28, 2000, the Administrator established test programs which allow the specified Deputy Associate GSA Administrator, "in consultation with the Departments of Defense (DOD) and State (State), to grant administrative relief for travel and relocation claims where such relief should be granted based on legal or equitable considerations, but is prohibited by statutory or regulatory restrictions."

After we explained to Mr. Middaugh that we cannot provide him the exceptional relief he is seeking, he asked that we forward his claim to someone who has that ability. We therefore dismiss the case and transfer the claim to GSA's Deputy Associate Administrator for the Office of Transportation and Personal Property, for such action as she may deem appropriate -- either under the relocation expense test program or for suggestion to the Administrator as to a recommendation that Congress enact special legislation.

STEPHEN M. DANIELS
Board Judge