

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

August 30, 2001

GSBCA 15609-RELO

In the Matter of DAVID B. NELSON

David B. Nelson, Lusaka, Zambia, Claimant.

Lynn Mercer, Chief of Operations Manager, Public Health Service, Centers for Disease Control and Prevention, Department of Health and Human Services, Atlanta, GA, appearing for Department of Health and Human Services.

HYATT, Board Judge.

In December 2000, claimant, David B. Nelson, a public health advisor employed by the Centers for Disease Control and Prevention (CDC), was transferred in the interest of the Government from Atlanta, Georgia, to Lusaka, Zambia. Although he had previously transferred four times within the continental United States, this was his first international relocation with the Government.

Because he was unfamiliar with the rules applying to overseas transfers, Mr. Nelson consulted with the CDC travel specialist about the categories of expenses that would be reimbursed in connection with this transfer. On at least three occasions, he inquired whether he would be eligible to recover real estate expenses and was assured that these would be reimbursed in the same way as for a domestic move. When the travel specialist asked if he wanted to use a relocation company he declined, but told her that he might sell his house in Atlanta. She did not suggest that there would be any difficulty with reimbursement of allowable expenses, and budgeted money for real estate transaction expenses incurred in connection with the move. The travel specialist also supplied claimant with general written instructions describing entitlements associated with both domestic and overseas transfers. These instructions do not make clear that employees transferring overseas are not permitted to be reimbursed for real estate expenses incurred in the sale of their homes at the old duty station at the time they accept the assignment.

Mr. Nelson sold his house and, after submitting a claim for reimbursement of the expenses incurred, was advised that the expenses could not be paid in connection with a

transfer abroad. CDC concedes that the travel specialist misinformed claimant and has expressed regret that he was misled. CDC has also taken steps to correct the dissemination of inaccurate information with respect to entitlements of employees transferring to foreign countries. Nonetheless, CDC has declined to reimburse Mr. Nelson for the real estate expenses since they are not permitted to be paid by law. Mr. Nelson has asked the Board to review this determination, pointing out that he reasonably relied on the advice of the travel specialist.

Discussion

CDC has properly determined that it has no authority to reimburse claimant for these expenses. When an employee located in a nonforeign area is assigned to a post of duty in a foreign country, the general assumption is that the employee will retain a residence in the nonforeign area with the expectation of eventually returning to the old official station. Real estate expenses are authorized only in the event the employee returns to a different duty station within the United States. By statute, then, the agency is prohibited from reimbursing real estate transaction expenses incurred by an employee transferred to a location outside of the United States if the sale occurs prior to official notification that the employee will be returning to an official station other than the one from which the employee was transferred overseas. 5 U.S.C. § 5724a(d)(3) (Supp.V 1999); see also 41 CFR 302-6.1(g) (2000).

The Board has, on numerous occasions, recognized that despite the unpalatable result, particularly when an employee has received inaccurate information from the agency, there is simply no authority to permit payment of these expenses. E.g., Mark H. Swenson, GSBCA 15504-RELO, 01-1 BCA ¶ 31,410; John K. Middaugh, GSBCA 15516-RELO, 01-1 BCA ¶ 31,369; Stephen W. Van Dyke, GSBCA 15422-RELO, 01-1 BCA ¶ 31,270 (2000); Marilyn A. Whitworth, GSBCA 15174-RELO, 00-1 BCA ¶ 30,811; James E. Black, GSBCA 14548-RELO, 98-2 BCA ¶ 29,876.

Reimbursement of these expenses would be contrary to statute and regulation. Accordingly, the claim must be denied.

CATHERINE B. HYATT
Board Judge