

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

February 13, 2002

GSBCA 15626-RELO

In the Matter of SHIRLEY RAE VANDERBURG

Shirley Rae Vanderburg, Albuquerque, NM, Claimant.

Barbara Williams, Financial Specialist, National Business Center, Department of the Interior, Denver CO, appearing for Department of the Interior.

WILLIAMS, Board Judge.

An employee is eligible for reimbursement of real estate expenses where the agency orally manifested a clear administrative intent to transfer her even though there had been no formal written notification of transfer at the time she signed the agreement to sell her home.

An employee is not entitled to be reimbursed for shipping a second privately owned vehicle (POV) when the agency reimbursed her for the mileage and expense of driving her other POV and the agency determined that shipping the additional POV was not advantageous to the Government.

Background

On April 20, 2001, claimant, Shirley Rae Vanderburg, a senior contract specialist with the Bureau of Indian Affairs in Portland, Oregon, spoke with Mr. Hotubbee, the Procurement Chief of the Office of Special Trustee in Albuquerque, New Mexico, regarding a transfer. During this conversation, Mr. Hotubbee, having previously received verbal approval from the Office of Special Trustee to offer claimant this transfer, agreed to hire claimant. Mr. Hotubbee asked claimant to submit a written request for transfer via facsimile machine for the record, and she did so that day. The next day Ms. Vanderburg called her real estate agent and the real estate agent had a buyer who wanted her house, so it was never listed. By e-mail dated April 23, 2001, claimant advised Mr. Hotubbee as follows:

I left you a voice message regarding my house. It's sold! Now, of course, they want me out of there ASAP. So if things are still a go I will need:

1. Credit Card.

2. Travel Auth. so I can voucher my closing costs, approx. \$10,000
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3. Temp. quarters, since I don't have time for a househunting trip. . . .
4. Get the paperwork started to transfer my warrant. I think you have enough to send to OST?

That same day, Mr. Hotubbee replied: "I've sent all your info to DC for action. I'll let you know as soon as I hear something. I think we can move pretty fast though." The agency delayed in sending claimant the letter confirming her job offer because of ongoing negotiations concerning her release date. Claimant's SF-52 for her transfer was generated on April 25. On May 9, 2001, the formal offer letter was sent to claimant. On May 10, 2001, Ms. Vanderburg signed her request for travel authorization and an employment agreement to remain in Government service for one year after the effective date of her transfer. Her reporting date at the new official duty station was June 8, 2001.

On May 16, 2001, claimant was issued a travel authorization for her transfer from Oregon to Albuquerque, approving real estate expenses, shipment of her household goods, and temporary quarters subsistence expenses.

Claimant and the buyer of her property signed the sales agreement on April 21, 2001. They executed addenda on April 26, May 3, May 4, and May 22, 2001, and the closing date for the sale of her Oregon property was on May 30, 2001. Her costs incurred in selling her Oregon residence totaled \$9022.50.

On June 21, claimant was notified that the agency was unable to reimburse the expenses incurred in connection with the sale of her residence at her previous duty station because the regulations prohibited her from incurring such expenses prior to official notification of the transfer.

Claimant drove her POV from Oregon to Albuquerque and was reimbursed for that cost. However, claimant had also shipped an additional POV which she owned. The agency received an invoice from Graebel Van Lines in the amount of \$1434.30 for shipment of a second vehicle. The agency determined that claimant owes this amount because Ms. Vanderburg was already reimbursed for driving her POV from Oregon to New Mexico; she could not also ship a vehicle at Government expense. Claimant stated that in a previous move last year the agency had reimbursed her for the shipment of her truck as well as for the mileage for her POV.

Discussion

Real Estate Expenses

The Government is authorized by statute to pay the real estate transaction expenses of employees who transfer in the interest of the Government. 5 U.S.C. § 5724a(d) (2000). The statutory authorization is implemented by the Federal Travel Regulation (FTR), which provides:

A written travel authorization shall be issued to the . . . employee before he/she reports to the . . . new official station. The agency should advise the

employee . . . not to incur relocation expenses in anticipation of a relocation until he/she has received written notification of such authorization.

41 CFR 302-1.3(c) (2000).

The Board has recognized a general rule that when an employee incurs real estate expenses prior to receiving formal notification of a pending transfer, the employee will only be eligible for reimbursement if the agency had manifested a clear "administrative intent" to transfer the employee. Connie F. Green, 01-1 BCA ¶ 31,175; Dennis A. Edwards, 00-1 BCA ¶ 30,741; see also John W. Chambers, B-260456 (June 4, 1996); Warren A. White, B-235046 (Sept. 18, 1989).

Whether an agency has manifested a "clear intention" to transfer an employee prior to issuance of formal notification of its intent depends on the facts and circumstances of the specific situation presented for decision. For example, unofficial telephone contacts notifying an employee of a potential reduction in force, a letter stating a position is surplusage and offering assistance in locating another position, and an official announcement that the essential functions of an installation would be relocated, have been held sufficient to evidence administrative intent to transfer. Green, 01-1 BCA at 153,998 (citing Lawrence C. Jackson, B-207564 (Nov. 22, 1982); Glenn A. Schwartz, B-202687 (Sept. 1, 1981); Orville H. Myers, 57 Com. Gen. 447 (1978)). Telephone contacts in which a definite offer is made, even though contingent upon higher level approvals or receipt of medical and security clearances, may also establish the requisite administrative intent. E.g., Deborah A. Osipchak, B-270196 (Mar. 22, 1996); Travis D. Skinner, B-198880 (Oct. 21, 1980). Conversations with agency officials in which an employee is told his or her prospects for a transfer were good have not sufficed to show clear administrative intent. George S. McGowan, B-206246 (Aug. 29, 1984).

Here, the evidence suggests the existence of an administrative intent to transfer this employee at the time she entered into a contract under which she became obligated to sell her residence at the old duty station. Claimant's supervisor agreed to hire her on April 20, the day before she entered into a contract for the sale of her residence, and he had already received verbal approval from the Office of Special Trustee to offer claimant the transfer.

In addition, the agency must determine that the expenses to be reimbursed were incurred incident to the anticipated transfer. Green, 01-1 BCA at 153,998-99; Kenneth E. James, B-256002 (July 2, 1996); Caridad A. Smith, B-204480 (June 8, 1982); Muriel V. Landry, B-198028 (Nov. 3, 1980). The real estate expenses claimant incurred here were clearly incident to her transfer. Claimant put her house on the market after receiving a verbal offer of transfer, sold it that same day, and entered into a sales contract before receiving formal notice of transfer.

Shipment of an Additional POV

The agency correctly determined that there is no legal authority to reimburse claimant here for shipping one POV and driving another to the new duty station.

In September 1996, Congress enacted legislation authorizing agencies to reimburse employees for the cost of transporting a POV to a new official station under certain conditions, with an effective date of March 1997. 5 U.S.C. § 5727(c); see James H. Shaw, GSBGA 14718-RELO, 99-1 BCA ¶ 30,359, reconsideration denied, 00-1 BCA at 930,821; Gary J. Rossio, GSBGA 14570-RELO, 98-2 BCA ¶ 29,844. On March 23, 1997, implementing regulations were published in the FTR, part 302-10. As we recognized in Arlon J. Rowe, GSBGA 15056-RELO, 00-1 BCA ¶ 30,819, the FTR permits agencies to authorize transportation of a POV to the new official station when an agency determines that it is advantageous and cost-effective to the Government. 41 CFR 302-10.4. FTR 302-10.12 advises employees:

Your agency decides whether it is more advantageous for you and/or a member of your immediate family to drive your POV for all or part of the distance or to have it transported. If your agency decides that driving the POV is more advantageous, your reimbursement will be limited to the allowances provided in part 302-2 of this chapter for the travel and transportation expenses you and/or your immediate family incur en route.

41 CFR 302-10.12. FTR 302-10.301 further explains:

Under what conditions may my agency authorize transportation of my POV wholly within CONUS?

Your agency will authorize transportation only when:

(a) It has determined that use of your POV to transport you and/or your immediate family from your old official station (or place of actual residence, if you are a new appointee or student trainee) to your new official station would be advantageous to the Government;

(b) Both your old official station (or place of actual residence, if you are a new appointee or student trainee) and your new official station are located within CONUS; and

(c) Your agency further determines that it would be more advantageous and cost effective to the Government to transport your POV to the new official station at Government expense and to pay for transportation of you and/or your immediate family by commercial means than to have you or an immediate family member drive the POV to the new official station.

41 CFR 302-10.301.

Here, the agency determined that authorizing reimbursement for shipment of claimant's POV would not be advantageous to the Government, reasoning:

Because you were reimbursed for driving your POV from Oregon to New Mexico, you cannot also ship a vehicle at government expense. FTR 302-10.301 lists several conditions that must be met in order to justify the

[Government's] assuming responsibility for the cost of the shipment. In addition, DOI's [Department of the Interior's] Financial Administration Memorandum (FAM) NO. 97-016(II.G.6), outlines the policy for DOI employees who wish to ship a POV. As a single employee, with no immediate family members moving at government expense, DOI specifically prohibits the shipment of one POV when another POV is driven to the new official station.

Based on the record, there is no basis for disturbing the agency's determination. See Jaret A. Langston, GSBCA 15327-RELO, 01-2 BCA ¶ 31,513 (employee is not entitled to ship two POVs where agency did not determine that shipment would be advantageous to the Government under similar provisions of Joint Travel Regulations C11000 and C11009); Norman Lahr, GSBCA 15123-RELO, 00-2 BCA ¶ 31,012 (employee is not entitled to ship POV at Government expense absent a specific authorization and determination that transporting the POV for the employee is advantageous and economical to the Government).

Decision

The claim is granted in part. Claimant may be reimbursed for her real estate expenses so long as the amount is authorized under the governing regulations.

MARY ELLEN COSTER WILLIAMS
Board Judge