

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

September 20, 2001

GSBCA 15647-RELO

In the Matter of DANIEL E. BROWN

Daniel E. Brown, Forest Hill, MD, Claimant.

Ray E. York, Chief, Travel Systems Division, Defense Finance and Accounting Service, Indianapolis, IN, appearing for Department of Defense.

DeGRAFF, Board Judge.

An employee who entered into a binding contract to sell his residence incident to a permanent change of station must be reimbursed for allowable real estate sales expenses even though the agency canceled the transfer before the sale closed.

Background

On June 2, 1999, the Department of Defense (DoD) sent Daniel E. Brown a memorandum stating that he was being transferred from his permanent duty station in Illinois to a new permanent duty station in Oklahoma. DoD provided Mr. Brown with written travel orders dated June 17, confirming the transfer. The travel orders stated that Mr. Brown could utilize a relocation services company to sell his residence in Iowa, in lieu of incurring reimbursable real estate sales expenses. As a result of the transfer, Mr. Brown listed his house in Iowa for sale, found a buyer, and entered into a contract to sell the house. The contract provided that if Mr. Brown did not complete the sale, he would be liable for return of the purchaser's earnest money deposit, the full real estate brokerage commission, all completed inspections, attorney's fees, abstract and title examination fees, appraisal fees and credit reports, any additional expenses that the purchaser incurred related to the property, and all damages incurred by the purchaser due to Mr. Brown's failure to complete the sale.

On July 8, after Mr. Brown entered into the contract to sell his house, DoD amended Mr. Brown's travel orders to authorize him to incur reimbursable real estate sales expenses. On July 30, DoD told Mr. Brown by telephone that he was being transferred to Germany, instead of Oklahoma. On August 2, DoD sent Mr. Brown a memorandum stating that his transfer to Oklahoma was canceled, and that he was being transferred to Germany. On August 5, DoD provided Mr. Brown with written travel orders, confirming the transfer from Illinois to Germany. Mr. Brown's contract to sell his house required him to close the sale on August 20, which he did.

When Mr. Brown completed his tour of duty in Germany in November 2000, DoD transferred him to Maryland. In February 2001, Mr. Brown asked to be reimbursed for the expenses he incurred when he sold his house in Iowa in August 1999.

The Defense Finance and Accounting Service forwarded the claim to us for an advance decision. Rule 501, 48 CFR 6105.1 (2000).

Discussion

DoD transferred Mr. Brown twice. DoD canceled the first transfer, to Oklahoma, so that it could effect the second transfer, to Germany. DoD could not have reimbursed Mr. Brown for his real estate sales expenses if he had incurred those expenses incident to his transfer to Germany. Because, however, Mr. Brown incurred his expenses incident to his transfer to Oklahoma, DoD must reimburse his expenses as allowed by applicable regulations.

If Mr. Brown had sold his house in Iowa incident to his transfer from Illinois to Germany, he would not be entitled to be reimbursed for his real estate sales expenses. This is so because when an agency transfers an employee from a duty station within the United States to a duty station outside the United States, the relevant statute provides that the agency can reimburse the employee for the expenses of selling a house at the old duty station only if the sale occurs after the employee receives official notification that he will not return to that duty station. 5 U.S.C. § 5724a(d)(2), (3) (Supp. V 1999). Mr. Brown, however, did not sell his house incident to his transfer to Germany. He listed the house for sale, found a buyer, and entered into a contract for sale before he learned of his transfer to Germany.

Mr. Brown sold his house in Iowa incident to his transfer from Illinois to Oklahoma. When an agency transfers an employee in the interest of the Government between two duty stations located within the United States, the relevant statute provides that the agency must reimburse the employee for the real estate sales expenses that the employee is required to pay. 5 U.S.C. § 5724a(d)(1). If DoD had completed Mr. Brown's transfer to Oklahoma, the statute would clearly call for DoD to reimburse him for his real estate sales expenses. Also, if Mr. Brown had incurred his sales expenses before DoD canceled his transfer, the statute would have obligated DoD to reimburse him for his real estate sales expenses as if the transfer had been completed. Michael J. Halpin, GSBCA 14509-RELO, 98-1 BCA ¶ 29,730 (where employee in good faith and in anticipation of transfer incurs expenses before agency cancels transfer and transfer is canceled due to circumstances beyond employee's control, agency must reimburse employee as if the transfer had been completed).

The question presented by Mr. Brown's claim is whether DoD is bound by the statute to reimburse him for his real estate sales expenses, even though he incurred those expenses after DoD canceled his transfer to Oklahoma. The General Accounting Office (GAO), which resolved relocation claims until mid-1996, decided that an employee who entered into a binding real estate sales contract before a transfer was canceled was entitled to be reimbursed as if the transfer had been completed. Maj. J.F. Suszyski, B-177130 (Feb. 2, 1973). We reach the same conclusion regarding Mr. Brown. The statute provides that an agency will reimburse a transferred employee for real estate sales expenses that the employee is required to pay, and the moment that an employee enters into a binding real estate sales contract, the

employee is required either to incur the expenses necessary to fulfill the contractual obligation or to pay the price for breaking the contract. Thus, we conclude that if an employee enters into a real estate sales contract in good faith and in anticipation of a transfer, if the transfer is subsequently canceled due to circumstances beyond the employee's control, and if the employee is later required to incur real estate sales expenses in order to close the sale, the agency must reimburse the employee for those expenses as if the transfer had been completed.¹

DoD must reimburse Mr. Brown for his allowable real estate sales expenses. DoD's cancellation of the transfer was beyond Mr. Brown's control. Mr. Brown, in good faith and in anticipation of his transfer to Oklahoma, entered into a binding contract to sell his house in Iowa, and he was required to pay real estate sales expenses in order to close that sale. DoD should reimburse Mr. Brown in accordance with the applicable regulations, as if his transfer had been completed.

MARTHA H. DeGRAFF
Board Judge

¹ If an employee can cancel a contract by paying a nominal penalty, the result might very well be different. See Warren L. Shipp, 59 Comp. Gen. 502 (1980) (employee obligated to avoid unnecessary expenses).