

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

January 29, 2002

GSBCA 15719-RELO

In the Matter of TIMOTHY C. FORD

Timothy C. Ford, Fairfax, VA, Claimant.

W. L. Hasty, III, Director of Human Resources, Defense Commissary Agency, Fort Lee, VA, appearing for Department of Defense.

DeGRAFF, Board Judge.

An employee who reports for duty at a new official station is not on temporary duty at that station, and should be reimbursed for relocation expenses in accordance with permanent change of station travel orders.

Background

In September 2001, Timothy C. Ford was employed by the Defense Commissary Agency (DeCA) near Richmond, Virginia. On September 25, the Department of the Air Force offered him a position at The Pentagon in Northern Virginia, and Mr. Ford accepted the offer. The Air Force was aware that Mr. Ford did not have a current security clearance. On October 1, DeCA issued permanent change of station (PCS) travel orders, which authorized Mr. Ford to incur a variety of reimbursable expenses in connection with his transfer. Based upon those orders, Mr. Ford began preparing to move to the Northern Virginia area and signed a contract to purchase a house there.

On October 19, the Air Force sent an e-mail message to Mr. Ford. The message explained where he was to report when he arrived for his first day of work at The Pentagon, which was to be November 5. The e-mail stated that because Mr. Ford did not have a security clearance, he would not be able to gain access to the office to which he was supposed to be assigned at The Pentagon. However, the Air Force was arranging other office space for Mr. Ford to occupy until his clearance was granted. In addition, the Air Force had asked for a waiver to allow Mr. Ford to begin working for the Air Force without a security clearance. Mr. Ford spoke with someone at the Air Force a few days later and understood that the waiver had been granted. Mr. Ford had his household goods packed and loaded for

shipment to Northern Virginia, prepared to rent the house that he owned at his duty station near Richmond, and arranged to transfer his children to schools in Northern Virginia.

Mr. Ford's last day at his duty station near Richmond was Friday, November 2, and he and his family moved into temporary quarters near The Pentagon on November 4. Unbeknownst to Mr. Ford, at the end of the day on November 2, the Air Force informed DeCA that Mr. Ford could not enter on duty with the Air Force due to the lack of a security clearance. Mr. Ford did not learn of this development until he reported for work at The Pentagon on Monday morning, November 5. DeCA assigned Mr. Ford to a temporary position in one of its offices at The Pentagon, and he remains there today. In December, Mr. Ford settled on the purchase of the house that he had contracted to buy in Northern Virginia.

In the interest of assisting Mr. Ford, DeCA asks us for an advance decision, pursuant to our Rule 501. 48 CFR 6105 (2000). Specifically, DeCA asks whether Mr. Ford should be reimbursed in accordance with the October 1, 2001 PCS travel orders, or whether he should be placed in temporary duty status because he is only temporarily assigned to the DeCA position at The Pentagon. In addition, DeCA asks whether it could reimburse him for his allowable expenses if his transfer to The Pentagon is ultimately canceled.

Decision

Mr. Ford should be reimbursed for his transfer to The Pentagon, pursuant to the October 1, 2001 PCS travel orders. An employee is eligible to be reimbursed for relocation expenses if a change of official station is authorized or approved by the head of an agency or other designated official, and if the employee transfers from one official duty station to another for permanent duty, provided that the transfer is in the interest of the Government and not primarily for the benefit of the employee. 5 U.S.C. §§ 5724, 5724a (2000); 41 CFR 302-1.3(a) (2001). There is no dispute as to whether Mr. Ford's change of official station was authorized or approved, or whether his transfer was in the interest of the Government. Therefore, he is eligible to be reimbursed for relocation expenses if he transferred from one official duty station to another for permanent duty.

As we recently explained in Gregory M. Chaklos, GSBCA 15685-RELO (Jan. 24, 2002), the statutes and regulations that govern relocation benefits do not define the word "transfer." A long line of Comptroller General decisions, however, established that when the word "transfer" is used in statutes and regulations governing relocation expenses, it means "a change of official station without a break in service of one workday or more." Gregory A. Akers, B-197771 (Aug. 11, 1981) (citing cases). An "official station" is "the building or other place where the . . . employee regularly reports for duty." 41 CFR 302-1.4(k). When Mr. Ford left his duty station in the Richmond area and reported for work at his new duty station at The Pentagon, his official station changed and he had no break in service. Therefore, Mr. Ford fulfills the requirement that he must have transferred from one official duty station to another.

As we also explained in Chaklos, so far as relocation benefits are concerned, it makes no difference whether an employee's appointment is temporary or permanent. As the Comptroller General explained several times, the words "transferred from one official station

to another for permanent duty" refer to "a change in the permanent duty station of an employee without a break in service and not to the tenure of his appointment." Thomas N. Wikstrom, 59 Comp. Gen. 374, 375 (1980); Mary M. Rydquist, B-164051 (July 10, 1968); 27 Comp. Gen. 757 (1948); 22 Comp. Gen. 219 (1942). In Paul Henderson, GSBCA 15480-RELO, 01-2 BCA ¶ 31,501, we agreed with the Comptroller General's logic when we stated that "[s]tatute and regulation make no distinction between temporary and permanent positions for determining eligibility for relocation entitlements." 01-2 BCA at 155,566. Thus, even though Mr. Ford's appointment with DeCA at The Pentagon is temporary, he fulfills the requirement that he must have transferred for permanent duty. Because Mr. Ford transferred from one official duty station to another for permanent duty, he should be reimbursed in accordance with the October 1, 2001 PCS travel orders.

Mr. Ford cannot be placed on temporary duty at The Pentagon. Payment of temporary duty per diem and allowances is authorized only when an employee is traveling away from the employee's permanent duty station. 5 U.S.C. § 5702(a); Kenneth E. Billings, GSBCA 15264-TRAV, 00-2 BCA ¶ 30,961. An employee's permanent duty station is the place at which he performs the major portion of his duties and where he is expected to spend the greater part of his time. John P. DeLeo, GSBCA 14042-TRAV, 97-2 BCA ¶ 29,156. Mr. Ford's transfer to The Pentagon, for permanent duty, was effective on the date he reported for duty there. 41 CFR 302-1.4(l). Because Mr. Ford's permanent duty station is The Pentagon, he cannot be placed on temporary duty there. Any attempt to amend his travel orders to place him on temporary duty at The Pentagon would be ineffective. Erwin E. Drossel, B-203009 (May 17, 1982).

Finally, because Mr. Ford has already transferred to The Pentagon, his transfer cannot be canceled. The Comptroller General decision regarding canceled transfers to which DeCA refers in its submission, B. Lee Charlton, B-189953 (Nov. 23, 1977), does not apply to Mr. Ford's situation because Mr. Charlton's transfer was canceled before he reported for duty at his new duty station. Mr. Ford's transfer, however, was effective the date that he reported for duty at The Pentagon. If Mr. Ford is subsequently transferred to another location, he may be reimbursed for the authorized, allowable expenses that he incurs in connection with the subsequent transfer.

MARTHA H. DeGRAFF
Board Judge