

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

November 8, 2002

GSBCA 15806-RELO

In the Matter of JACKIE LEVERETTE

Jackie Leverette, Bay Shore, NY, Claimant.

Ray E. York, Chief, Finance Systems & Procedures Division, Defense Finance and Accounting Service, Indianapolis, IN, appearing for Defense Finance and Accounting Service.

WILLIAMS, Board Judge.

An employee is not entitled to reimbursement of real estate expenses or temporary quarters subsistence expenses (TQSE) where the agency determined his transfer was not in the interest of the Government and the vacancy announcement expressly provided that relocation expenses would not be provided. Nor is claimant entitled to reimbursement of these expenses as return rights from an overseas tour of duty because statute does not authorize reimbursement of such expenses as part of return rights travel.

Background

For the second time, claimant, Mr. Jackie Leverette, a program support assistant with the Department of Veterans Affairs (VA), claims \$14,275.19 in relocation expenses incurred in conjunction with his move from Germany to New York. Specifically, Mr. Leverette seeks costs incurred in connection with the purchase of his home in Bay Shore, New York, in the amount of \$11,725.19, plus \$2550 in TQSE. Mr. Leverette's reporting date was January 22, 2001.

Previously, Mr. Leverette sought the identical reimbursement from the VA, as the agency hiring him, and the VA denied his claim because its vacancy announcement for this position expressly stated that relocation expenses would not be provided. Mr. Leverette appealed the agency's determination in GSBCA 15614-RELO, and the Board agreed with the agency and denied the claim. Jackie Leverette, GSBCA 15614-RELO, 02-1 BCA ¶ 31,825.

This time, Mr. Leverette seeks reimbursement from his previous employer in Germany, the Department of Defense (DOD), the "losing activity." The DOD component handling this claim, the Defense Finance and Accounting Service (DFAS), has denied the claim for the same grounds articulated by the VA and the Board previously -- i.e., that the vacancy announcement expressly stated that no relocation benefits would be provided. In addition, DOD points out that there was no agreement between the VA as the gaining activity and DOD, the losing activity, authorizing relocation expenses. Finally, the agency notes that it paid Mr. Leverette's air fare and related per diem from Weisbaden, Germany, to New York, and shipped his household goods (HHG), thus fulfilling any entitlement to return rights Mr. Leverette may have had.

Although claimant acknowledges that the vacancy announcement expressly stated "relocation no," he had "no accurate idea what [that statement] meant." Mr. Leverette believes that he should be entitled to relocation benefits because he was overseas. He states: "The standard of no relocation expenses for state-side employees moving from state to state makes some sense, since they are already in the states and expenses could/would be somewhat minimal. But I was coming from the foreign country of Germany, having lived a totally different lifestyle based on reasonable pricing nonexistent here in New York which is a very high cost area."

Discussion

Claimant is not entitled to reimbursement of his relocation expenses from DOD. As we recognized in denying his earlier, identical claim against the VA:

When an employee is transferred from one permanent duty station to another, for the purpose of determining relocation benefits, the transfer must be characterized as being "in the interest of the Government" or "primarily for the convenience or benefit of an employee." Riyoji Funai, GSBGA 15452-RELO, 01-1 BCA ¶ 31,342, at 154,778. . . .

An agency's determination as to the primary beneficiary of a transfer is discretionary, and we will not overturn it unless it is arbitrary, capricious, or clearly erroneous under the facts of the case. Funai (citing Eugene R. Platt, 59 Comp. Gen. 699 (1980), modified on reconsideration, 61 Comp. Gen. 156 (1981)).

Here, neither the VA nor DOD has characterized claimant's transfer as being in the interest of the Government since claimant voluntarily applied for a position which did not authorize relocation benefits. Nor did DOD as the losing activity have any obligation to reimburse real estate expenses or TQSE since there was no agreement between the VA and DOD regarding such reimbursement and claimant is not entitled to these types of expenses as return travel benefits.

The reimbursement of travel and transportation expenses of employees upon return from posts of duty outside the continental United States is governed by 5 U.S.C. § 5722. Section 5722(a)(2) authorizes payment of limited travel and transportation expenses of an employee's immediate family and his HHG "on the return of an employee from his post of duty outside the continental United States to the place of his actual residence at the time of assignment to duty outside the United States."

Claimant is entitled to the benefits prescribed in 5 U.S.C. § 5722, as implemented by 41 CFR 302-1.12. Louis David Carter, GSBCA 15381-RELO, 00-2 BCA ¶ 31,137; Jerry U. Shimoda, GSBCA 14264-RELO, 99-1 BCA ¶ 30,170; Arnold Krochmal, B-213730 (Apr. 17, 1984) (citing 54 Comp. Gen. 991 (1975)). These benefits do not include real estate expenses or TQSE.

As we recognized in Paul C. Martin, GSBCA 13722-RELO, 98-1 BCA ¶ 29,412 (1996), expenses recoverable under the return rights provision are significantly different from the expenses payable to an employee relocating in the interest of the Government. In particular, reimbursement of real estate expenses associated with the sale and purchase of homes, the miscellaneous moving allowance, and reimbursement of temporary quarters subsistence expenses are not part of the return rights package.

Decision

The claim is denied.

MARY ELLEN COSTER WILLIAMS
Board Judge