

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

May 16, 2002

GSBCA 15830-RELO

In the Matter of TEJBIR SINGH

Tejbir Singh, St. Marys, GA, Claimant.

G. J. Murphy, Disbursing Officer, Personnel Support Activity, Department of the Navy, Jacksonville, FL, appearing for Department of the Navy.

DeGRAFF, Board Judge.

Tejbir Singh asks that we review his agency's decision to deny his claim for reimbursement of the real estate transaction expenses he incurred when he sold his house at his old duty station in the United States in connection with his transfer to a new duty station outside the United States. Because Mr. Singh sold his house before the agency officially notified him that he would not return to his old duty station, the agency correctly decided to deny his claim.

Background

Mr. Singh is a civilian employee of the Department of Defense (DoD). In early 1999, when Mr. Singh's permanent duty station was Fort Benning, Georgia, DoD identified his position as one that was going to be abolished pursuant to a reduction in force. The Civilian Personnel Advisory Center at Fort Benning told Mr. Singh that although it would provide assistance in finding a position within the commuting area, there was no guarantee that such a position could be found. The advisory center strongly recommended that Mr. Singh look for a position outside the commuting area.

Mr. Singh applied for a position in South Korea, and DoD selected him to fill that position. In connection with the transfer to South Korea, DoD issued a travel authorization on March 31, 1999. Although the authorization provided that DoD would pay for or reimburse Mr. Singh for a number of his relocation expenses, it did not provide that DoD would reimburse Mr. Singh for real estate transaction expenses. Mr. Singh owned a house near Fort Benning and he asked the advisory center about reimbursement for real estate transaction expenses. According to Mr. Singh, the advisory center told him that based upon paragraph C1052 of the Joint Travel Regulations, he could sell his house, but his claim for reimbursement would be processed only if at some future time he was required to register

under the Priority Placement Program or was subject to a reduction in force. Also, because he was transferring overseas, his claim for reimbursement would be processed only if he completed the overseas tour of duty and returned to the United States at a duty station other than Fort Benning. Mr. Singh transferred to South Korea in early June 1999, and sold his house in Georgia later that month.

In December 2000, the advisory center at Fort Benning told Mr. Singh that he should register in the Priority Placement Program, which he did. In May 2001, DoD selected Mr. Singh to fill a position at Kings Bay Naval Submarine Base, Georgia. In connection with the transfer to Georgia, DoD issued a travel authorization on June 7, 2001. Although the authorization provided that DoD would pay for or reimburse Mr. Singh for a number of his relocation expenses, it did not provide that DoD would reimburse Mr. Singh for real estate transaction expenses. Mr. Singh purchased a house at his new duty station in August 2001, and asked DoD to amend his travel authorization to provide for reimbursement of real estate transaction expenses. On November 15, 2001, DoD amended the travel authorization as Mr. Singh requested.

On November 26, 2001, Mr. Singh asked DoD to reimburse him for the real estate transaction expenses he incurred in connection with the sale of his house near Fort Benning. DoD denied Mr. Singh's claim, and he asked us to review DoD's decision.

Discussion

The federal statute that governs Mr. Singh's claim provides that when an agency transfers an employee from a duty station within the United States to a duty station outside the United States and then back to the United States, the agency can reimburse the employee for the expenses of selling a house at the first duty station in the United States 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) (2000). The Joint Travel Regulations (JTR) are consistent with the statute. JTR C14000-C, -D (May 1, 1999).¹ We have discussed these statutory and regulatory requirements many times and applied them to employees whose circumstances were similar to those of Mr. Singh. Edward J. Nanartowich, GSBCA 15237-RELO, 01-1 BCA ¶ 31,290 (citing cases). The JTR paragraph to which the advisory center referred, JTR C1052, explains which of a transferred employee's expenses will be reimbursed by the activity gaining the employee's services and which expenses will be reimbursed by the activity losing his services, and has no bearing upon Mr. Singh's eligibility to be reimbursed for his real estate transaction expenses. JTR C1052 (April 1, 1999).²

The law is clear that DoD is not authorized to reimburse Mr. Singh for the expenses he incurred when he sold his house near Fort Benning, unless he sold the house after he

¹ This JTR revision was applicable on the effective date of Mr. Singh's transfer to South Korea. See 41 CFR 302-1.3(d), -1.4(l) (2000). The pertinent provisions of the JTR have not changed since then.

² This JTR revision was applicable on the effective date of Mr. Singh's transfer to South Korea. The pertinent provisions of the JTR have not changed since then.

received official notification that he would not return to Fort Benning. According to JTR C14000-C.4 and -D.2, such official notification usually takes the form of permanent change of station orders. Indeed, something seemingly as definitive as the cancellation of an employee's return rights does not constitute official notification that the employee will not return to his former duty station, because there is still a chance that the employee will be able to return there at the conclusion of the overseas tour of duty. Mark H. Swenson, GSBCA 15504-RELO, 01-1 BCA ¶ 31,410 (citing cases). Mr. Singh points out that he sold his house after DoD identified his position as one that was going to be abolished and offered to help him find a position elsewhere, and says that these actions show that DoD clearly intended to transfer him from Fort Benning. We do not doubt that DoD intended for Mr. Singh to transfer from Fort Benning. The pertinent inquiry, however, is whether before Mr. Singh sold his house, DoD officially notified him that he would not return to Fort Benning.

Mr. Singh sold his house before he received official notification that he would not return from South Korea to Fort Benning. When Mr. Singh sold his house near Fort Benning, DoD had not issued any permanent change of station orders telling him that he would not return there. Although DoD told him that his job had been identified as one that would be abolished and offered to help him find another position, DoD did not attempt to predict what the situation might be in the future when Mr. Singh was ready to return from South Korea. When Mr. Singh sold his house, DoD did not tell him where he might be posted after South Korea, much less provide him with official notification that he would not return to Fort Benning. Thus, according to the statute and its implementing regulations, DoD has no authority to reimburse Mr. Singh for his real estate transaction expenses.

The travel authorization that DoD prepared when Mr. Singh transferred from Fort Benning to South Korea informed him that DoD had not authorized reimbursement for real estate transaction expenses. It is unfortunate if he received inaccurate or confusing advice from the advisory center, but such advice does not authorize DoD to reimburse Mr. Singh contrary to statute and regulation. Pamela A. Mackenzie, GSBCA 15328-RELO, 01-1 BCA ¶ 31,174 (2000).

The claim is denied.

MARTHA H. DeGRAFF
Board Judge