

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

June 6, 2003

GSBCA 15958-RELO

In the Matter of RICHARD H. MOGFORD

Richard H. Mogford, Moffett Field, CA, Claimant.

Morris W. Collie, Attorney-Advisor, NASA Johnson Space Center, Houston, TX,
appearing for National Aeronautics and Space Administration.

WILLIAMS, Board Judge.

A relocated employee is not entitled to be reimbursed for expenses incurred in purchasing a home 150 miles from the new duty station because he does not regularly commute from that home to the new duty station.

Statement of Facts

Claimant, Richard H. Mogford, left his employment with the Federal Aviation Administration in southern New Jersey to accept a position with the National Aeronautics and Space Administration (NASA) Ames Research Center (Ames) in the San Francisco Bay Area, and officially reported for duty at Ames on September 13, 1999. Claimant was authorized to receive relocation benefits, including real estate transaction expenses, and received a one-year extension of time within which to purchase a residence at his new duty station.

On June 3, 2002, Mr. Mogford completed the purchase of a residence in Gualala, California, approximately 150 miles north of the San Francisco Bay area. Although the Gualala home is claimant's primary residence, he and his wife live on a boat docked at a marina twelve miles from Ames four nights a week and commute to and from Ames from the boat during their work week. Claimant and his wife both work a four-day compressed week at Ames, work one day a week at home, and travel to their primary residence in Gualala each weekend. On June 6, 2002, Mr. Mogford sought reimbursement of \$4585 for expenses incurred in the purchase of the Gualala, California, residence.

NASA denied Mr. Mogford's request for reimbursement because he does not regularly commute from the residence in Gualala to Ames.

Discussion

The Federal Travel Regulation (FTR) requires an employee to "regularly commute" from a residence in order to be eligible for reimbursement of real estate expenses incident to transfer. The Board has held "regularly commutes" to mean commutes on a daily basis. FTR 302-1.4(k) provides:

Official station or post of duty. The building or other place where the officer or employee regularly reports for duty. . . . With respect to entitlement under this chapter relating to the residence and the household goods and personal effects of an employee, official station or post of duty also means the residence or other quarters from which the employee regularly commutes to and from work. However, where the official station or post of duty is in a remote area where adequate family housing is not available within reasonable daily commuting distance, residence includes the dwelling where the family of the employee resides or will reside, but only if such residence reasonably relates to the official station as determined by an appropriate administrative official.

41 CFR 302-1.4(k) (1999).

With respect to the purchase of a residence, the Board has consistently held that the requirement that the employee regularly commute from the residence in question contemplates commuting on a daily basis, not just on weekends or occasionally during the month. Albert R. Wilcox, GSBCA 15776-RELO, 02-2 BCA ¶ 31,864; Herman E. Harke, GSBCA 15282-RELO, 00-2 BCA ¶ 31,017; David Morrell, GSBCA 15229-RELO, 00-1 BCA ¶ 30,899; David M. Whetsell, GSBCA 14089-RELO, 98-1 BCA ¶ 29,610; Ezaat Asaad, GSBCA 14484-RELO, 98-1 BCA ¶ 29,667.

In Morrell, the claimant rented a room near his duty station and commuted daily from such temporary quarters, but on weekends and holidays returned to a residence where his family lived. The claimant incurred real estate expenses on the sale of the family residence upon being transferred, but could not be reimbursed because he did not regularly commute from the sold residence. As in Morrell, Mr. Mogford lives in temporary quarters during the week, commutes daily to Ames from those quarters, and commutes only on weekends to the residence in Gualala. As a result, he does not regularly commute between the Gualala residence and Ames, and is thus is not eligible for reimbursement of the real estate expenses incurred in purchasing that home.

FTR 302-1.4(k) provides one exception to the "regularly commutes" rule. The exception applies in situations where the official station is in a remote area where adequate housing is not available, but Mr. Mogford has not claimed, and the record does not suggest, that he relocated to a remote area. Mr. Mogford contends that "acceptable, affordable housing is not available within daily commuting distance," but the FTR does not authorize reimbursement on this basis.

Decision

The claim is denied.

MARY ELLEN COSTER WILLIAMS
Board Judge