

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

May 6, 2003

GSBCA 15991-RELO

In the Matter of JOHN C. BURTON

John C. Burton, Jacksonville, FL, Claimant.

Charles N. Stowell, Certifying Officer, United States Department of State, Washington, DC, appearing for United States Department of State.

HYATT, Board Judge.

An employee who returns from an overseas location to a post other than the prior duty station within the United States qualifies for reimbursement of the expenses of purchasing a home even if the home purchased is located in the employee's designated home of record. The fact that the new home is located a significant distance from the new duty station does not preclude recovery of residence transaction expenses so long as the employee actually commutes from the home to the duty station on a regular basis.

Background

Claimant, John C. Burton, is employed by the United States Department of State as a special agent with the Bureau of Diplomatic Security Service. In March 2000, his duty station was changed from Port-Au-Prince, Haiti, to the Federal Law Enforcement Training Center in Glynco, Georgia. His permanent duty station prior to the move to Port-Au-Prince was in Washington, D.C. When he transferred overseas he designated Jacksonville, Florida, rather than Washington, D.C., as his official home of record for personal reasons.

After transferring to Glynco and within the two-year period for reimbursement of real estate expenses incurred incident to a permanent change of station, Mr. Burton purchased and went to settlement on a new home in Jacksonville, Florida. He submitted a voucher for the real estate transaction expenses incurred in the purchase.

The State Department declined to reimburse Mr. Burton for these expenses. In

responding to his submission, the Department provided two reasons for denying payment of residence transaction expenses. First, in the Department's view, the purchase of a home in Jacksonville is geographically too distant from Glynco to qualify as a purchase at the new duty station. Second, since Mr. Burton's designated home of record was Jacksonville, Florida, the purchase was not considered to be incident to the transfer.

Discussion

As a general proposition, reimbursement of real estate expenses incurred as a result of a permanent change of station from an overseas location is authorized when the federal employee was stationed first in the United States or other nonforeign area, transferred overseas in the interest of the Government, and then returned to a different nonforeign area or location in the United States. 5 U.S.C. § 5724a(d)(2) (2000); 41 CFR 302-6.1(g) (2000); see Douglas J. Palmeri, GSBCA 14898-RELO, 99-2 BCA ¶ 30,499; Theresa F. Zuber, GSBCA 13851-RELO, 97-1 BCA ¶ 28,878. Since Mr. Burton was not returned to the Washington, D.C., area, he would ordinarily be eligible for reimbursement of real estate transaction expenses, here the allowable costs associated with the purchase of his home at the new duty station.

The State Department's first reason for disallowing Mr. Burton's claim is that Mr. Burton bought a home in Jacksonville, Florida, which the State Department considers to be located too far away from the new duty station, in Glynco, Georgia, to qualify for reimbursement of these expenses.¹ The distance of the new home from the new place of employment, however, is not the test of eligibility for reimbursement. The test is whether the home from which he commutes to and from work was purchased incident to, or as a result of, the transfer. See, e.g., Jeffrey R. Jenkins, GSBCA 15339-RELO, 00-2 BCA ¶ 31,066. This determination depends on the facts and circumstances attendant to the transfer and the purchase.

Here, Mr. Burton is occupying the house and regularly commutes from Jacksonville to his place of employment in Glynco. He bought the house after he was transferred to Glynco, and needed a permanent residence from which to commute to work. This is not an instance where the house purchased was further from the new duty station than the employee's previous dwelling, such that the employee did not achieve the benefit of living closer to the workplace, or was not located near the new duty station at all. See, e.g., Claude N. Narramore, GSBCA 15445-RELO, 01-2 BCA ¶ 31,562; David M. Whetsell, GSBCA 14089-RELO, 98-1 BCA ¶ 29,610. As such, the facts and circumstances support claimant's position that he bought the house as a result of the transfer and should be able to recoup the allowable costs of the purchase.

The fact that claimant designated Jacksonville as his home of record similarly does not disqualify him from receiving residence transaction expenses in connection with this relocation. To be eligible for residence transaction expenses, the statute and regulation

¹ The distance from Jacksonville to the Federal Law Enforcement Training Center is approximately seventy miles.

require only that claimant's return from overseas be to a location other than that from which he was transferred, which is the case here. Designation of a home of record is primarily intended for administrative purposes when an employee is sent overseas for a tour of duty. For example, this designation may be used for purposes of home leave travel and for determination of return rights for employees who retire from or leave Government service while posted overseas. See 6 FAM [Foreign Affairs Manual] 125.8. There does not appear to be a requirement that the employee maintain a permanent residence at the designated home of record, and we are aware of no regulation that would preclude payment of residence transaction costs when the employee is returned to a home of record when that location differs from the duty station from which the employee was transferred overseas.

On the facts presented here, Mr. Burton is eligible to be paid the allowable expenses associated with the purchase of a home in Jacksonville.

CATHERINE B. HYATT
Board Judge