

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

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September 30, 2003

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GSBCA 16138-RELO

In the Matter of ALEXANDER S. BUTTON

Alexander S. Button, Riva, MD, Claimant.

Rick Miller, Civilian Travel and Allowances, Personnel Resources, Legislation and Entitlements, Office of the Chief of Staff, Department of the Air Force, Washington, DC, appearing for Department of the Air Force.

**DANIELS**, Board Judge (Chairman).

Alexander S. Button, an employee of the Department of Defense (DoD), seeks reimbursement of expenses he incurred for property management services for his home in the United Kingdom while he was assigned temporarily to a duty station in the United States. We conclude that notwithstanding DoD's promise to pay for these expenses, the agency does not have authority to make reimbursement.

Background

Mr. Button has been stationed permanently in the United Kingdom since 1992, and he owns the home in which he lives there. In September 2002, he was transferred, on a temporary change of station (TCS), to Washington, D.C., for a two-year assignment. DoD issued to Mr. Button travel orders which authorize payment of property management services. The employee engaged a gentleman in the United Kingdom to manage his home while he was in Washington, and he paid the man a considerable sum for his services. When Mr. Button asked for the promised reimbursement, however, it was denied. DoD now believes that it cannot pay for property management services for any residence located outside the United States.

Discussion

Mr. Button contends that provisions of DoD's Joint Travel Regulations (JTR) support his position. In particular, he calls our attention to JTR C15050-A.4 (Sept. 1, 2002), which says that "[p]ayment for PM [property management] services may be authorized when an employee: . . . is authorized TCS," and JTR C15053-A, which says that "[a]n employee

authorized a TCS . . . is entitled to PM services for the residence at the previous official station when the employee and/or a member of the employee's immediate family holds title to the residence." DoD maintains that 5 U.S.C. § 5737 (2000), which provides for payment of relocation expenses to employees who are performing assignments under a TCS, restricts the application of the JTR provisions to property management services for residences in the United States.

Section 5737 of title 5, United States Code, provides generally that an agency may pay "[e]xpenses of property management services" to an employee whom it sends on a TCS. The agency may make this and other payments, however, only under regulations prescribed by the Administrator of General Services. 5 U.S.C. § 5737(a) (referencing id. § 5738). The regulation prescribed by the Administrator, the Federal Travel Regulation (FTR), provides that an agency may reimburse an employee for property management services only for certain residences within the United States. 41 CFR 302-15.3(b), -15.7 (2002); see also id. 302-15.4 (employees transferring "wholly outside the United States are not eligible for payment for property management services"). The FTR, consistent with statute, grants no real estate transaction or management benefits to employees for homes they may own outside this country, even when the employees live in those homes while performing Government business. See 5 U.S.C. § 5724a(d)(1), (2), (8). The JTR, which implements and supplements the FTR with respect to DoD civilian employees, must as a matter of law be understood in a manner consistent with that legislatively-sanctioned regulation. Vera A. Wood, GSBCA 15637-TRAV, et al., 02-1 BCA ¶ 31,693 (2001); Lorrie L. Wood, GSBCA 13705-TRAV, 97-1 BCA ¶ 28,707 (1996).

It is of course regrettable that DoD promised Mr. Button it would reimburse him for the expenses of having his home in the United Kingdom managed while he was on assignment in the United States, and now cannot fulfill that commitment. The fact that the error occurred does not create any authority in the agency or this Board to give the employee any more money than the amount to which he is entitled under the law, however. As we have explained on several occasions:

In considering claims like this one, . . . the arbiter must balance the harm the employee would suffer if the claim were denied against the damage which would result to our system of government if federal officials were free to spend money in ways which are contrary to the strictures of statute and regulation. In making this balance, the Supreme Court has clearly come down on the side of protecting our system of government. We follow the Court in holding that although [the employee] has undeniably relied to his detriment on [the agency's] promises, he may not be reimbursed because the law prevents the agency from honoring commitments made in its name by officials who do not have the power to make them.

Charles Anderson III, GSBCA 15747-RELO, 02-2 BCA ¶ 31,892, at 157,585 (citing Louise C. Mâsse, GSBCA 15684-RELO, 02-1 BCA ¶ 31,694 (2001); Gary MacLeay, GSBCA 15394-RELO, 01-1 BCA ¶ 31,210 (2000); Pamela A. Mackenzie, GSBCA 15328-RELO, 01-1 BCA ¶ 31,174 (2000) (all citing Office of Personnel Management v. Richmond, 496 U.S. 414 (1990); Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947))).

Decision

The claim is denied.

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STEPHEN M. DANIELS  
Board Judge