

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

February 24, 2004

GSBCA 16300-RELO

In the Matter of ROGER HENRY

Roger Henry, Hammond, LA, Claimant.

Edgardo Aviles, Chief, Travel Section, National Finance Center, United States Customs and Border Protection, Department of Homeland Security, Indianapolis, IN, appearing for Department of Homeland Security.

BORWICK, Board Judge.

Claimant, an employee of the United States Immigration and Customs Enforcement Bureau of the Department of Homeland Security, agency, contests the agency's determination that an apartment in Kenner, Louisiana, was the residence near his old station from which claimant would receive relocation benefits. Claimant says that the agency should have considered his family's residence in Columbus, Mississippi, as the proper residence. Since claimant commuted daily from the Kenner apartment to his old station, the agency correctly applied applicable provisions of the Federal Travel Regulation (FTR). We deny the claim.

Background

Claimant is an employee with the agency's New Orleans Air and Marine Branch (Air Branch); his permanent duty station was in Belle Chasse, Louisiana. On May 20, 1998, claimant temporarily left the agency to go on active duty with the United States Air Force (USAF), but informed the agency that he intended to return to his civilian employment in 2003. Claimant sold his house in Harvey, Louisiana, and moved with his family to his active duty station in Columbus, Mississippi, which is approximately 326 miles from what was his permanent civilian duty station of Belle Chasse.

On or about May 14, 2002, the agency presented a consolidated transfer briefing concerning anticipated relocation of the Air Branch from Belle Chasse to Hammond,

Louisiana.¹ According to briefing slides in the record before the Board, the briefing was for the purpose of "early notification." The agency advised that the relocation was scheduled for completion in June 2003, that the agency would issue relocation authorizations in March 2003, and that relocation expenses incurred before the issuance of the authorizations would not be reimbursed. Since claimant was then on active duty with the USAF, he was not present at the briefing.

By memorandum of January 2, 2003, the USAF relieved claimant of his active duty assignment effective February 28, and transferred him to the USAF retired list. On January 13, 2003, claimant returned to his civilian position with the agency in Belle Chasse. Also in January, claimant took a suitcase of clothing and a few personal belongings from his residence in Columbus and stayed with his daughter in an apartment, located in Kenner, Louisiana, that he had leased jointly with her. From January 13 until about July 1, claimant commuted daily from the apartment in Kenner, Louisiana, to his duty station in Belle Chasse.

Shortly after claimant returned to the agency, his colleagues mentioned the relocation briefing the agency had provided the previous May. According to claimant, he asked branch management about his situation in relation to a paid move. Claimant states he was told that if he had not heard anything from "headquarters" he would not qualify for a paid move. Suspecting that the agency's Air Branch had forgotten to include him in its move plans because he had been on active military duty, he sent a memorandum to his superiors explaining that "I currently live in an apartment in Kenner, Louisiana, which I have leased for the past three years." Claimant stated that "I plan to move from my Kenner apartment to an apartment in the Hammond area sometime this summer." He also stated that he was not moving his household goods from his house in Columbus, Mississippi, so the cost to relocate claimant would be insignificant compared to the cost to move his fellow employees. Claimant requested "favorable consideration for a government funded move of my household goods from Kenner, Louisiana to Hammond, Louisiana."

Claimant states that in April, his agency approved a paid move. On May 16, 2003, the agency issued a travel authorization for claimant's transfer from Belle Chasse to Hammond and authorized payment of real estate transaction expenses.

On June 5, 2003, claimant wrote the acting chief of the agency's Travel Section and asked whether his "permanent" residence in Columbus or the apartment in Kenner would be considered his residence for the purpose of determining claimant's relocation entitlements. The agency replied, stating that in its view, the apartment in Kenner was his residence because that was his residence as defined in the FTR at the time of his official notification of the transfer. The agency offered to pay part of the costs of shipping claimant's household goods from Columbus, Mississippi, to Hammond, Louisiana, capped by what it would have cost the agency to ship the goods from Kenner to Hammond.

Discussion

¹ Belle Chasse is about ten miles southeast of New Orleans. Hammond is approximately sixty-seven miles from Belle Chasse, and lies northwest of Lake Ponchartrain.

The FTR establishes eligibility for the residence for which a transferred employee may receive real estate reimbursement benefits:

You may receive reimbursement for the one residence from which you regularly commute to and from work on a daily basis and which was your residence at the time you were officially notified by competent authority to transfer to a new official station.

41 CFR 302-11.100 (2003). "Residence" is a defined term in the FTR. For a residence to qualify as the basis for reimbursement of relocation expenses, there are two basic requirements, both of which must be met. First the residence must be the one residence from which the employee regularly commutes to and from work on a daily basis. William T. Orders, GSBICA 16095-RELO, 03-2 BCA ¶ 32,389. Second, the residence must have been the residence at the time of official notification of transfer.

Claimant's house in Columbus, Mississippi, fails to meet the first requirement because claimant did not engage in a regular daily commute between Columbus, Mississippi, and his old duty station in Belle Chasse, Louisiana. From the documents in the record, it appears that claimant purchased the house in Columbus while he was on active duty with the USAF.

Claimant says that his spouse and household goods remain at his home in Columbus, which should therefore be deemed his residence. Those facts, if true, do not establish claimant's house as a qualifying residence; it is the daily commuting requirement which claimant's residence must satisfy. Paul Henderson, GSBICA 15480-RELO, 01-2 BCA ¶ 31,501 (location of family, property tax venue, and voting residence irrelevant in qualifying residence for relocation reimbursements).

Claimant's Columbus residence does not meet the second requirement because the general consolidated transfer briefing to the employees is not official notification to claimant that claimant would be transferred. Generally, the official notification is through the change of station travel authorization, 41 CFR 302-11.305, which the agency furnished claimant when he resided in the apartment located in Kenner. Claimant also commuted daily between Kenner and Belle Chasse for five and one-half months. Claimant is entitled to receive relocation benefits for the Kenner residence, not his house in Columbus. The agency correctly applied the FTR.

Finally, claimant, relying on the provisions of 5 CFR 353.106(c), maintains he deserves special consideration as an officer returning to federal service from active military duty. That provision states that agencies have an obligation to consider employees absent on military duty for any incident or advantage of employment that they may have been entitled to had they not been absent. Claimant, however, was not on active duty between January 13 and July 1, 2003, during the approximate five and one-half months he spent commuting between Kenner and Belle Chasse. In determining that claimant's apartment in Kenner, instead of claimant's house in Columbus, was the appropriate residence under the FTR, the agency provided claimant his full entitlement regarding this aspect of claimant's relocation. The agency fulfilled its obligations under that provision. Consequently, the Board denies the claim.

ANTHONY S. BORWICK
Board Judge