

# Board of Contract Appeals

General Services Administration  
Washington, D.C. 20405

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November 4, 2004

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GSBCA 16523-RELO

In the Matter of ANGELA BROWN

Angela Brown, Augusta, GA, Claimant.

Judy Hughes, Travel Policy and Procedures, Defense Finance and Accounting Service, Columbus, OH, appearing for Department of Defense.

**DeGRAFF**, Board Judge.

In mid-June 2004, the Department of Defense (DoD) told Angela Brown it was transferring her from one permanent duty station to another in early August 2004. DoD issued travel orders to Ms. Brown and checked the box next to "unexpired lease" in the list of authorized relocation expenses. At her old duty station, Ms. Brown lived in an apartment which she and a co-tenant rented. According to the lease, which was not due to expire until October 31, 2004, Ms. Brown and her co-tenant were jointly and severally liable for paying the rent. The lease said the landlord's acceptance of a partial payment of rent would not amount to a satisfaction or waiver of the rent due, and the landlord retained the right to collect any balance.

At the end of July, Ms. Brown notified her landlord of her impending transfer, which was then less than two weeks away. Although the lease allowed subleases with the landlord's consent, Ms. Brown says there was no time to find a subtenant to replace her. She sent her landlord's property manager a letter stating she knew she was responsible for "half of the lease" and stating she would pay \$1380, which was half of the rent due for August, September, and October. The property manager responded by saying although Ms. Brown's lease was "terminated" due to her transfer, she was still obligated to pay her "portion" of the lease. The property manager went on to acknowledge payment "in full" for August, September, and October, in the amount of \$1380. After Ms. Brown transferred to her new duty station, her co-tenant continued to live in the apartment and the lease continued in effect. Ms. Brown believed DoD would reimburse the \$1380 as part of her authorized relocation expenses. But, when she submitted a voucher for this amount, DoD decided not to pay. Ms. Brown asks us to review DoD's decision.

When an agency transfers a civilian employee from one permanent duty station to another, the agency will reimburse the employee for many relocation expenses, including the expense of settling an unexpired lease on the employee's residence at the old duty station. 41 CFR 302-11.1 (2003); Joint Travel Regulations (JTR) C14000-A.1. The regulations anticipate the settlement of the lease will result in its termination. 41 CFR 302-11.21; JTR C14004-B. When an employee shares an interest in a lease, the regulations provide for reimbursing the employee's settlement expenses on a pro rata basis according to the portion of the lease for which the employee is responsible. 41 CFR 302-11.321. There are, however, certain conditions for obtaining reimbursement, such as the requirement that an employee must be unable to avoid the settlement expenses by, for example, subleasing. 41 CFR 302-11.7; JTR C14004-A. No matter how an agency completes an employee's travel orders, the agency can reimburse the employee only in accordance with the applicable regulations.

An employee who shares an interest in a lease and is contractually responsible for only a portion of the rent can terminate his or her part of the lease and be reimbursed pro rata for settling the share of the lease for which he or she was responsible. B-177413 (Jan. 22, 1973). However, if an employee shares an interest in a lease and is contractually responsible for the entire amount of the rent, and the lease is not terminated when the employee transfers, the employee is not eligible to be reimbursed because there has been no settlement of the employee's obligation to pay rent in accordance with the lease. Daniel Janusz, GSBCA 14653-RELO, 99-1 BCA ¶ 30,121 (1998), aff'd on reconsideration, 99-1 BCA ¶ 30,250. Here, Ms. Brown shared an interest in the lease and was contractually responsible for the entire amount of the rent. The property manager's statements upon receipt of the \$1380 suggest the landlord agreed to terminate a portion of the lease and to settle Ms. Brown's obligation to pay rent, regardless of the terms of the lease itself. This, however, does not mean Ms. Brown is eligible to be reimbursed.

Ms. Brown has the burden of showing she meets the conditions for obtaining reimbursement set out in the regulations. As noted above, one condition is that she must have been unable to avoid the expenses she paid by, for example, subleasing. Although Ms. Brown says there was no time to find a subtenant, there is no evidence to show she ever made any effort to find someone to replace her on the lease, even though the lease permitted subleases with the consent of the landlord. The regulations require an employee who looks to the agency for reimbursement of lease settlement expenses to make a reasonable effort to mitigate damages by, for example, posting signs, placing advertisements, or contacting real estate offices in order to find a replacement tenant. An employee who makes no such effort does not meet the requirements for being reimbursed. B-183018 (Jan. 8, 1976). Because there is nothing to show Ms. Brown made an effort to mitigate her damages, she does not meet one of the conditions for obtaining reimbursement of the \$1380 she paid to her landlord.

The claim is denied.

Board Judge