

# **Board of Contract Appeals**

General Services Administration  
Washington, D.C. 20405

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May 5, 2005

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GSBCA 16619-RELO

In the Matter of UTA ACKER

Uta Acker, Arlington, VA, Claimant.

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

**GOODMAN**, Board Judge.

Claimant, Uta Acker, is a civilian employee of the Defense Information Systems Agency. She has asked this Board to review the agency's denial of her claim arising from a permanent change of station (PCS) move.

## Background

Claimant was issued travel orders dated June 23, 2004, for a PCS move from Laguna Niguel, California, to Arlington, Virginia, to report to her new duty station on July 11, 2004. After accomplishing her PCS move, she requested reimbursement of real estate expenses associated with the sale of her home in Tucson, Arizona. The agency denied reimbursement of the real estate expenses, based upon its determination that the house claimant sold was neither in the area of claimant's old duty station nor the home from which she commuted to and from work daily when she worked in California.

### Discussion

By statute, agencies are to reimburse employees for real estate expenses incurred in the sale of a residence at the old official station incident to a transfer in the interest of the Government. 5 U.S.C. § 5724a(d) (2000). Under the Federal Travel Regulation (FTR), which implements this statutory provision, to qualify for reimbursement, this residence must be the one “from which [the employee] regularly commute[d] to and from work on a daily basis and which was [the employee's] residence at the time [he or she was] officially notified by competent authority to transfer to a new official station.” 41 CFR 302-11.100 (2004). The pertinent provisions of the Joint Travel Regulations (JTR), applicable to relocation expenses incurred by civilian Defense Department employees, are similar. JTR C14000-A (July 2004).

We have held that these regulations do not permit the Government to reimburse employees for the sale of a home from which the employee was not actually commuting regularly on a daily basis. *William T. Orders*, GSBCA 16095-RELO, 03-2 BCA ¶ 32,389; *accord Wayne A. Wetzel*, GSBCA 16017-RELO, 03-1 BCA ¶ 32,224; *William D. Phillips*, GSBCA 15514-RELO, 02-1 BCA ¶ 31,697 (2001); *Mitchell J. Schutz*, GSBCA 15521-RELO, 01-2 BCA ¶ 31,461; *Herman E. Harke*, GSBCA 15282-RELO, 00-2 BCA ¶ 31,017; *David Morrell*, GSBCA 15229-RELO, 00-1 BCA ¶ 30,899.

It is the claimant's burden to demonstrate that the costs sought are reimbursable. *Paula K. Fowler*, GSBCA 15384-RELO, 01-1 BCA ¶ 31,281. Claimant has not met this burden, as is clear that she did not commute from the home in Arizona on a daily basis. Rather, she states in a communication to the agency that her husband occupied the home in Arizona and she occupied “temporary quarters” in California.

Claimant also states that she relied to her detriment on her travel orders which authorized reimbursement for real estate expenses without referencing the regulatory requirements. While it is regrettable that claimant was not aware nor advised of the regulatory requirements, the agency nonetheless lacks the authority to pay these expenses. The statute and implementing regulations simply preclude payment of these expenses, even if claimant received information which led her to believe that the costs were reimbursable. *Amos F. Jones, Jr.*, GSBCA 16305-RELO, 04-2 BCA ¶ 32,677.

Decision

The claim is denied.

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ALLAN H. GOODMAN  
Board Judge