

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

October 17, 2000

GSBCA 15301-RELO

In the Matter of CONNIE F. GREEN

Connie F. Green, Leesburg, FL, Claimant.

J. Patrick O'Toole, Director, Division of Travel Management, Social Security Administration, Baltimore, MD, appearing for Social Security Administration.

HYATT, Board Judge.

Claimant, Connie F. Green, is a claims representative employed by the Social Security Administration (SSA). SSA has asked for the Board's opinion, pursuant to 31 U.S.C. § 3529 (Supp. IV 1998), as to whether Ms. Green is entitled to reimbursement of the expenses associated with the sale of her residence in connection with her permanent change of station from Georgia to Leesburg, Florida.

Background

Prior to her relocation to Florida, claimant was employed as a management analyst in SSA's South Carolina Area Director's Office (SC-ADO). Her office and residence were located in Atlanta, Georgia.

According to SSA, on August 19, 1999, Ms. Green received a telephone call from SSA's South Florida Area Director's Office (SFL-ADO), advising her of a potential employment opportunity in that office, which was seeking permission to post a vacancy for a claims representative position. Apparently the South Florida office was aware that Ms. Green had an interest in relocating to Florida and undertook to apprise her of the vacancy in the event she wished to apply.

Also on August 19, the North Florida Area Director's Office (NFL-ADO) made a formal request to the regional personnel office to post and fill a vacancy for a claims representative position in the Leesburg, Florida office. Permission to post this opening was given and the position was posted and advertised. Ms. Green applied for the position.

Ms. Green states that she understood the telephone conversation that occurred on August 19 to constitute an offer for the position of claims representative in Leesburg, which she states she accepted.¹ That same day, believing she had received and verbally accepted a job offer from SFL-ADO, Ms. Green signed a listing agreement with a real estate agent to place her house in Atlanta on the market. Ms. Green further states that as a military spouse and long-time federal employee, she understands the requirements for receiving relocation expenses and would not have listed her house for sale in the absence of a firm job offer.

On August 25, the regional personnel office sent a list of best qualified candidates for the Leesburg position to the NFL-ADO. Ms. Green was on the list. On August 26, 1999, the NFL-ADO selected Ms. Green from the best qualified list and called her to formally offer the position, which she accepted. Travel orders were subsequently issued authorizing Ms. Green's permanent change of station from Atlanta to Leesburg, effective September 26, 1999.

Meanwhile, on August 25, Ms. Green accepted a sales contract from a buyer for her home, in essence committing to sell the house. The settlement date for closing on the sale of Ms. Green's home in Atlanta was September 21, 1999. She reported for duty in Leesburg on September 27.

Upon reporting to Leesburg, Ms. Green expressed an interest in filing a voucher to claim closing costs incurred in the sale of her Atlanta residence. At that time she was informed that she was not eligible to recover these costs because she listed and entered into a contract to sell her house prior to being formally offered the job in Leesburg. Accordingly, SSA considered that the sale was not incident to the transfer.

Ms. Green disagrees. She says that she understood the telephone notification on August 19 to constitute an offer of employment which she verbally accepted.² In reliance on her belief that she would be transferring, she listed the house for sale. The SFL-ADO states that the call was not intended to be an offer of employment, but simply a courtesy call to advise claimant that a position for which she might be qualified would soon be posted. SSA's records reflect that NFL-ADO did not contact MS. Green prior to August 26.

SSA has expressed the opinion that while the "letter of the law" and precedent appear to preclude reimbursement of the expenses associated with the sale of the house, this may not reflect the intent of the regulations. Accordingly, the agency would like our guidance on whether it should pay this claim.

Discussion

The Government is authorized by statute to pay the real estate transaction expenses of employees who transfer in the interest of the Government. 5 U.S.C. § 5724a(d) (Supp. IV

¹Ms. Green does not provide the name of the individual with whom she spoke on August 19.

²Claimant does not recall receiving a call on August 26.

1998). The statutory authorization is implemented by the Federal Travel Regulation (FTR), which provides that

A written travel authorization shall be issued to the . . . employee before he/she reports to the . . . new official station. The agency should advise the employee . . . not to incur relocation expenses in anticipation of a relocation until he/she has received written notification of such authorization.

41 CFR 302-1.3(c) (1999). In addition, the agency must determine that the expenses to be reimbursed were incurred incident to the anticipated transfer. Kenneth E. James, B-256002 (July 2, 1996); Caridad A. Smith, B-204480 (June 8, 1982); Muriel V. Landry, B-198028 (Nov. 3, 1980).

The Board has observed that the policy underlying the rule set forth in FTR 302-1.3 is to avoid the possibility that either the employee or the Government "will lose money for no purpose." Rosemary H. Sellers, GSBCA 13654-RELO, 97-1 BCA ¶ 28,714. As a general rule, then, when an employee incurs real estate expenses prior to receiving formal notification of a pending transfer, the employee will only be eligible for reimbursement if the agency had manifested a clear "administrative intent" to transfer the employee. E.g., Dennis A. Edwards, GSBCA 14943-RELO, 00-1 BCA ¶ 30,741; John W. Chambers, B-260456 (June 4, 1996); Warren A. White, B-235046 (Sept. 18, 1989).

Agencies have broad discretion in determining whether there was administrative intent to transfer an employee. James K. Marron, 63 Comp. Gen. 298 (1984); Joan E. Marci, B-188301 (August 16, 1977). Whether an agency has manifested a "clear intention" to transfer an employee prior to issuance of formal notification of its intent depends on the facts and circumstances of the specific situation presented for decision. For example, unofficial telephone contacts notifying an employee of a potential reduction in force, a letter stating a position is surplusage and offering assistance in locating another position, and an official announcement that the essential functions of an installation would be relocated, have been held sufficient to evidence administrative intent to transfer. See, e.g., Lawrence C. Jackson, B-207564 (Nov. 22, 1982); Glenn A. Schwartz, B-202687 (Sept. 1, 1981); Orville H. Myers, 57 Comp. Gen. 447 (1978). Telephone contacts in which a definite offer, even though contingent upon higher level approvals or receipt of medical and security clearances, is made may also establish the requisite administrative intent. E.g., Deborah A. Osipchak, B-270196 (Mar. 22, 1996); Travis D. Skinner, B-198880 (Oct. 21, 1980). Conversations with agency officials in which an employee is told his or her prospects for a transfer were good have not sufficed to show clear administrative intent. George S. McGowan, B-206246 (Aug. 29, 1984); Where a house is listed, and a contract for sale entered into, before an offer is made, the necessary administrative intent is not present to justify payment of real estate expenses associated with the sale of the residence. Warren A. White.

Here, the evidence does not clearly point to the existence of an administrative intent to transfer this employee at the time she entered into a contract under which she became obligated to sell her residence at the old duty station. Although Ms. Green no doubt anticipated the possibility of a transfer to Florida, on the record before us it does not appear that on August 19, or at any time prior to August 25, the agency had decided to select her for

either of the positions that were open. The telephone conversation with one of the Florida offices is inconclusive. Although Ms. Green says she understood this to be an offer from the Leesburg office, which she verbally accepted, that office has no record of contacting Ms. Green prior to August 26, the day after claimant accepted an offer for her house. The SFL-ADO states that a call was made, but was simply for the purpose of notifying claimant that a vacancy for which she might qualify was open. In contrast to the cases cited above, there are no special circumstances, such as a potential reduction in force or closing of an office, showing that the employee's understanding that she would definitely be transferred was reasonable. This is not sufficient to establish the requisite prior administrative intent to transfer the employee.

Accordingly, based on the information presented to us, it does not appear that an administrative intent to transfer the employee existed at the time she entered into a contract to sell her residence. Under applicable law, on these facts, the agency should not reimburse claimant for the expenses associated with the sale of the house. If the agency has additional information showing that an administrative intent to transfer the employee existed prior to the sale of the house, it would be permissible to pay the claim.

CATHERINE B. HYATT
Board Judge