

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

March 7, 2001

GSBCA 15399-RELO

In the Matter of ROBERT J. WRIGHT

Brett P. Abner of Sharp & Gay, P.A., Jacksonville, FL, appearing for Claimant.

Jerome A. Snyder, Office of Counsel, Norfolk Naval Shipyard Detachment, Philadelphia Naval Business Center, Philadelphia, PA, appearing for Department of the Navy.

GOODMAN, Board Judge.

Claimant, Robert J. Wright, is a civilian employee of the Department of the Navy. He has requested that this Board review his agency's denial of reimbursement of certain costs he incurred in the sale of his residence arising from his permanent change of station (PCS).

Factual Background

In 1989 claimant was an employee of the Philadelphia Naval Shipyard (PNSY). He received orders for a PCS to the United States Naval Ship Repair Facility in Subic Bay, Philippines, dated March 3, 1989. Claimant arrived at Subic Bay on April 10, 1989. In April 1991, his former permanent duty station, PNSY, was identified by the Base Realignment and Closure (BRAC) Commission as a base to be considered for closure, and in September 1991 the base was approved for closure. At that time claimant's ship repair facility at Subic Bay was scheduled to close in July 1992. Claimant and the remaining individuals in his command were notified about the closure of Subic Bay and told that the mission performed at Subic Bay was to be shifted to the Ship Repair Unit in Singapore.

According to claimant, at that time orders were issued to approximately twenty five personnel at Subic Bay that returned them to their homes of record. On or about March 17, 1992, claimant received orders to return to PNSY.¹ Claimant alleges that he then contacted his former shop superintendent, John Peacock, to discuss returning to PNSY and other matters concerning his future as it might exist at PNSY. Claimant explained to his former shop superintendent that the ship repair facility at Subic Bay was set to close, but a ship repair unit was being set up in Singapore. He further explained that the new positions at the

¹ These orders are not in the record of this case; however, subsequent orders dated June 22, 1992, note "This cancels PCS travel order of 17 March 1992."

Singapore ship repair facility were slotted to be filled with employees from Subic Bay, and that his Subic Bay shipyard commander had indicated that claimant was qualified to fill one of the five slots and was strongly encouraging claimant to apply for this placement. Claimant's former shop superintendent also strongly encouraged claimant to apply for the Singapore position.

Claimant applied for the assignment in Singapore and was selected. On June 22, 1992, he received orders to report to Singapore. Claimant alleges that he again contacted his former shop superintendent. Claimant's attorney states in his submission to the Board:

Obviously, part of the necessity of the phone call was to alert or inform Mr. Peacock that Claimant would not be returning, at least at this point in time, to his shop at PNSY. A conversation then ensued between Claimant and Mr. Peacock as to the time period, [during] which Claimant would be posted in Singapore, and how that interplayed with the base closure of PNSY. Mr. Peacock realized that the likelihood would be that Claimant would not be returning to PNSY prior to the actual base closure [and he] further understood that Claimant's posting in Singapore had a corresponding beneficial effect which facilitated Mr. Peacock's ability to enable him to fill the Claimant's permanent position with another PNSY employee during the closure. This would occur if Mr. Peacock canceled Claimant's return rights to PNSY. Mr. Peacock explained all of this to Claimant and further explained to the Claimant that his decision is to cancel Claimant's return rights to PNSY based upon Mr. Peacock's knowledge that Claimant would go on [the] Priority Placement Program[s] (PPP) at the end of his tour in Singapore. Although Mr. Peacock stated to Claimant, without reservation or hesitation, that he was canceling Claimant's return rights to PNSY, to date Claimant has never received any written documentation which confirms the cancellation of his return rights or denies him his return rights. The conversation then turned to the possibility of other duty assignments for the Claimant in and around the Philadelphia area that might exist when Claimant's tour in Singapore terminated. Mr. Peacock advised Claimant that the job situation in and around Philadelphia seemed bleak, if not non-existent, based upon the fact that their shop mission, which was being performed at PNSY, was not the type of mission that was performed at a corresponding facility in that specific region. More specifically, Claimant and Mr. Peacock both knew that the next closest naval shipyard performing a similar mission was located in Norfolk, Virginia. Certainly, Norfolk, Virginia is not within commuting distance of Philadelphia and Claimant's former residence in Woodlyn, PA. That having been said and recognizing all relevant factors as explained to the Claimant by his superintendent, Mr. John Peacock, Claimant proceeded to get his family affairs in order.

After receiving his orders for a PCS to Singapore, claimant proceeded to place the Pennsylvania home on the market and eventually sold his former residence on October 29, 1992. Claimant states with regard to the sale of his residence:

Claimant's action related to the sale of his former residence were [sic] in fact based upon the direct statements made and forth coming [sic] orders to be

issued by his superintendent, Mr. John Peacock that, as far as Mr. Peacock was concerned there was no longer a job or a job position for Claimant to return to at PNSY and further there was no available posting for Claimant in and around the Philadelphia region.

Claimant never received orders based upon his conversations with Mr. Peacock. On February 5, 1998, claimant accomplished another PCS to a naval facility in Jacksonville, Florida. These orders authorized purchase of a residence at the new duty station but did not authorize any expenses or otherwise mention the sale of claimant's former residence in Woodlyn, Pennsylvania. In August 1999, claimant purchased a new residence. On March 1, 2000, claimant filed a claim requesting reimbursement for expenses arising out of the purchase of the new residence and the sale of his former residence. His new duty station in Florida approved reimbursement of the expenses arising from the purchase of the new residence and forwarded the claim for expenses for the sale of his former residence to his old duty station in Philadelphia. The agency thereafter denied his claim for the expenses of sale. The basis of the agency's denial is that claimant sold his former residence before he was officially informed that he would be assigned to a different permanent duty station. Claimant has requested the Board to review the agency's denial of his request for reimbursement of the costs incurred in the sale of his residence in 1992.

Discussion

Our recent decision in Edward J. Nanartowich, GSBCA 15237-RELO (Feb. 2, 2001), addressed the issues raised in the instant case. With regard to the applicable statutory and regulatory scheme, we stated:

A federal employee normally is not expected to sell the residence at or near the non-foreign PDS [permanent duty station] to which he or she was assigned when transferred to a PDS outside the United States. Rather, it is expected that the employee will retain the residence in anticipation of return to the same PDS. Only if and when the employee is officially notified at the close of the overseas tour that he or she will be returning to a different non-foreign PDS may the employee qualify for reimbursement of costs associated with the sale of this residence. These requirements are set out in statute (5 U.S.C. § 5724a(d) (Supp. IV 1998)), in the Federal Travel Regulation (41 CFR 302-6.1(g) (2000)) and in the Joint Travel Regulations (JTR) -- to which [claimant] is subject as a civilian employee of the Department of Defense (JTR C14000-D (May 1, 1999)).

We have addressed these requirements of statute and regulation on several occasions. E.g., Stephen W. Van Dyke, GSBCA 15422-RELO (Dec. 14, 2000); Pamela A. Mackenzie, GSBCA 15328-RELO [01-1 BCA ¶ 31,174 (2000)]; Marilyn A. Whitworth, GSBCA 15174-RELO, 00-1 BCA ¶ 30,811; Johnnie M. Jones, GSBCA 15079-RELO, 00-1 BCA ¶ 30,710; Alfred Voelkelt, GSBCA 14889-RELO, 99-1 BCA ¶ 30,362; James E. Black, GSBCA 14548-RELO, 98-2 BCA ¶ 29,876; Harry T. Teraoka, GSBCA 13641-RELO, 97-1 BCA ¶ 28,796; Chesley E. Kimbrel, GSBCA 13680-RELO, 97-2 BCA ¶ 29,043 (1996).

Slip op. at 2-3.

The statutory scheme discussed in Nanartowich which allows reimbursement of real estate expenses to employees transferred to a permanent duty station outside the United States was enacted into law in 1987. While the statutory language has been periodically amended, its content has remained the same until the present. From its inception, an employee was not entitled to reimbursement if the sale occurred before "official notification that the employee's return to the United States would be to an official duty station other than the official station from which the employee was transferred when assigned to the foreign post of duty." 5 U.S.C. § 5724a(a)(4)(A) (1988).

When claimant sold his home in October 1992, the Federal Travel Regulation, 41 CFR 302-6.1(g) (1992), supported the statutory scheme. It allowed, under certain conditions, reimbursement for the sale of a residence at the official duty station from which the

employee was transferred when he/she was assigned to a post of duty located in a foreign area.² The conditions are described in the following provision:

Reimbursement limitations. Reimbursement under this paragraph is prohibited for any sale . . . or purchase transaction that occurs prior to the employee's first being notified (generally in the form of a change of official station travel authorization) that instead of returning to the former nonforeign area official station, he/she will be reassigned or transferred to a different nonforeign area official station than the one from which he/she was transferred when assigned to the foreign post of duty.

41 CFR 302-6.2(g)(4).

The issue in this case is whether claimant sold his home at his former permanent duty station before or after he received official notification that his return to the United States would be to an official duty station other than the official station from which he was transferred when assigned to the foreign post of duty. Claimant alleges that in 1992, before he sold his home at his previous permanent duty station, he was advised verbally by his former shop superintendent that his return rights were canceled. He did not receive notification by change of official station travel authorization that instead of returning to the former nonforeign area official station, he would be reassigned or transferred to a nonforeign area official station other than one in the vicinity of Philadelphia. He admits that official travel orders confirming the verbal advice were not forthcoming. However, it is claimant's position that such verbal advice was the official notification required by statute and regulation that he would not be returning to his former permanent duty station. Claimant says that he relied upon this notification in selling his residence. Accordingly, claimant asserts entitlement to reimbursement for expenses incurred in that sale.

Claimant is not entitled to reimbursement, even if his shop superintendent had the authority to cancel his return rights and did so. We have held that cancellation of return rights does not constitute official notification that the employee is not returning to a former PDS in the United States. Even when an employee's return rights are canceled, there is no assurance that at the conclusion of the employee's overseas duty the employee will not be reassigned to a position in the same geographic area as his former permanent duty station. Cancellation of return rights before a claimant knows where he will be reassigned upon his return to the United States cannot be construed as official notification that the employee will not be returning to the vicinity of his former permanent duty station in the United States. Harry T. Teraoka, GSBCA 13641-RELO, 97-1 BCA ¶ 28,796.

As we explained in Nanartowich:

² In August 1994, Joint Travel Regulation (JTR) C14000-4 (now C14000-D) was issued to supplement this FTR provision. Both claimant and the agency have referenced a more current version of the regulation in their submissions, but this regulation did not exist at the time relevant to claimant's sale of his former residence. For a detailed discussion of this regulation, see our decisions in Alfred Voelkelt, 14889-RELO, 99-1 BCA ¶ 30,362, and Johnnie M. Jones, GSBCA 15079-RELO, 00-1 BCA ¶ 30,710 (1999).

The rule enunciated in statute and regulation and consistently upheld in our decisions is a reasonable one. Pending the employee's tour of duty overseas, both the Government and the employee keep their options open. Much can happen during the course of an employee's overseas tour Any decision regarding the sale of the residence at the old PDS is best put on hold.

Slip op. at 3.

Claimant himself admits that his actions in selling his residence were based upon the statements made by his supervisor and "forthcoming orders" which were never issued. Also, the conversations between claimant and his former shop superintendent occurred long before claimant's overseas tour of duty was over. In fact, the conversations occurred at the inception of claimant's second overseas assignment, and he sold his residence shortly thereafter. He sold his residence more than five years before his transfer to Jacksonville, Florida, when he first knew he would not return to the United States in the vicinity of his previous permanent duty station. Even if his return rights were canceled in 1992, as claimant asserts, this cannot be construed as official notification that he would not be reassigned in the vicinity of Philadelphia upon his return to the United States. Even though claimant knew in 1992 that the PNSY was to close, and that further federal employment in the Philadelphia area was unlikely for him, this did not foreclose claimant's reassignment to the Philadelphia area in the future when he returned to the United States. While claimant's reassignment to Florida may validate his and his supervisor's strong expectations in 1992 that claimant would not return to Philadelphia, such a negative outlook expressed by supervisors or employees has also been held not to be official notification as required by statute. Johnnie M. Jones.

Claimant sold his residence before he received the official notification required by statute and regulation. He is not entitled to be reimbursed the costs he seeks.

Decision

The claim is denied.

ALLAN H. GOODMAN
Board Judge