

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

December 4, 2001

GSBCA 15568-RELO

In the Matter of JAMES E. PEAK

James E. Peak, Fort Collins, CO, Claimant.

Jeanne DiGange, Authorized Certifying Officer, National Finance Center, Department of Agriculture, New Orleans, LA, appearing for Department of Agriculture.

DANIELS, Board Judge (Chairman).

The Department of Agriculture (USDA) asks, pursuant to 31 U.S.C. § 3529 (Supp. V 1999), whether it may pay relocation benefits to James E. Peak.

In December 2000, USDA offered Mr. Peak a position with its Fort Collins, Colorado, Animal and Plant Health Inspection Service office, and Mr. Peak accepted the job. At the time, he was employed by the Army Corps of Engineers in Wiesbaden, Germany. USDA issued to Mr. Peak permanent change of station orders which provide for payment of relocation benefits, including temporary quarters subsistence expenses, costs of temporarily storing his family's household goods, and expenses of selling the residence in Seattle, Washington (where the family lived before moving to Germany) and buying a new home in Colorado. The Corps paid the costs of travel from Wiesbaden to Fort Collins by Mr. Peak and his family, as well as the costs of transportation of their household goods. The family arrived in Fort Collins on January 24, 2001. Mr. Peak went off the Corps' payroll on January 27 and began work with USDA on January 28.

USDA is uncertain whether it may pay the benefits it authorized, since Mr. Peak was already in Fort Collins when he began employment with that department. The department poses to us a series of complicated questions.

The matter is really quite simple. Mr. Peak's official duty station, when he was hired by USDA, was Wiesbaden, Germany. The Federal Travel Regulation provides that "[i]n the case of transfer from one agency to another, [except for transfers for reasons of reduction-in-force or transfer of functions,] allowable expenses [of relocation] shall be paid from the funds of the agency to which the employee is transferred." 41 CFR 302-1.14(b) (2000); see also 5 U.S.C. § 5724(e) (2000). Because Mr. Peak was not transferred from the Corps to

USDA for reason of a reduction-in-force or a transfer of functions, USDA is responsible for the costs of his relocation.

The suggestion that Mr. Peak was hired while already located in Fort Collins, and therefore ineligible for relocation benefits, makes no sense whatsoever. Clearly, the claimant was living and working in Wiesbaden when he accepted USDA's job offer; he moved from Wiesbaden to Fort Collins for the purpose of working for USDA; and the department considered this hire in the interest of the Government, so that relocation expenses would be covered. The fact that Mr. Peak was physically located in Fort Collins prior to his being placed on the department's payroll can by no stretch of the imagination disqualify him from receiving the benefits promised in his permanent change of station orders. There was no break in the claimant's service between his Corps and USDA positions, and the Corps' willingness to assume his travel and transportation costs does not cancel USDA's obligation to pay the remaining, authorized costs of his relocation.

Similarly, the fact that Mr. Peak worked for the Corps in Seattle before being posted to Wiesbaden is irrelevant to the issue presented to us, except insofar as it makes appropriate the reimbursement of expenses the employee incurs in selling his former home in that city. See 5 U.S.C. § 5724a(d)(2).

STEPHEN M. DANIELS
Board Judge