

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

August 21, 2001

GSBCA 15620-RELO

In the Matter of A DEFENSE INTELLIGENCE AGENCY EMPLOYEE

A Defense Intelligence Agency Employee, Woodbridge, VA, Claimant.

William M. Dwyer, Chief, Civilian Career Management Division, Defense Intelligence Agency, Hanover, MD, appearing for Defense Intelligence Agency.

GOODMAN, Board Judge.

Claimant is an employee of the Defense Intelligence Agency (DIA). The agency involuntarily reassigned a number of employees in the greater Washington, D.C., area to fill Headquarters positions in Arlington, Virginia. Claimant was one of those selected for reassignment, with his new permanent duty station in Arlington, Virginia. The employee's request for permanent change of station (PCS) orders to enable him to move his permanent residence from Maryland to Virginia in conjunction with this reassignment was denied. The employee has requested this Board review the agency's decision.

Background

The claimant was hired into DIA while he was living in Woodbridge, Virginia, in February 1999. He was informed at that time that his permanent duty station (PDS) was to be in Hanover, Maryland, and that regularly recurring (two to three days a week) duty would be performed at a location in Arlington, Virginia, which is in excess of thirty miles from the PDS.

Claimant's commute to his PDS in Maryland from his Woodbridge, Virginia, residence was in excess of three hours each day. Claimant made this commute for more than a month following his employment and found it to be a grave hardship on him and his family. The commute to the Virginia location, on the other hand, was reasonable and acceptable to the claimant.

Claimant had the option of relocating his residence closer to his PDS in Maryland, but that would have resulted in an unreasonable commute to the Virginia location. Another option to claimant was to report to the Maryland PDS, then drive a Government vehicle, during working hours, to the Virginia location. This option was deemed least desirable for the obvious reasons of lost duty time and use of a Government vehicle for frequent and regularly scheduled duty at another location.

Claimant's supervisor suggested that claimant find a residence that balanced the commuting requirements of his PDS in Maryland and the Virginia location to which he reported two to three days per week. Claimant elected this option as the least disruptive to his family, and moved to Takoma Park, Maryland, which is between his old PDS in Maryland and the Virginia location. As the agency did not fund first duty station travel for CONUS (continental United States) based new employees, claimant was required to relocate his family at his own expense.

In November 2000, one and a half years following employment, claimant was deployed to Bosnia for a six-month period. Upon his return in April 2001, he was transferred because of a management directed reassignment to fill a critical position on the headquarters staff at the Arlington, Virginia, location. Thus, his new PDS would be the Virginia location in Arlington, Virginia. This nomination came at the beginning of the third year of a standard four-year tour. Claimant accepted this forced reassignment, and requested that he be granted PCS orders and entitlements to relocate his residence to the Northern Virginia area.

Claimant's request for PCS orders to enable him to move his permanent residence to the Northern Virginia area was denied. According to the agency, this denial was based upon the determination that the commuting times and distances of claimant's current commute from Takoma Park, Maryland, to his PDS in Hanover, Maryland, as compared to the prospective commute from the proposed new residence in Woodbridge, Virginia, to the new PDS in Arlington, Virginia, do not comply with an example contained in C4108, Change of Station Within Same City or Area, of the Joint Travel Regulations (JTR).

The employee states that since moving to his current residence in Takoma Park, Maryland, his wife gave birth to another child. As a result she had to enter into a leave without pay status from her United States Federal Government position to care for the newborn. The loss of his wife's income has created a financial strain for the family. Relocation to the Northern Virginia area in conjunction with the reassignment would place the employee and his immediate family in close proximity to extended family members who could provide quality, no cost childcare for their infant. His wife could then return to the federal work force and continue her career.

Discussion

Claimant seeks to have a PCS move authorized for reimbursement of real estate expenses. As we recognized in Cheryl A. Cadwell, GSBCA 14148-RELO, 97-2 BCA ¶ 29,066, "[g]enerally when an employee is transferred in the interest of the Government from one official permanent duty station to another, the Government, in accordance with regulatory prescriptions, is to pay the expenses the employee incurs in selling his residence at the old duty station and buying a home at the new one. 5 U.S.C. § 5724a(a)(4) (1988); 41 CFR 302-1.3(a)(1), pt. 302-6 (1993)."

In this instance, claimant's old and new PDSs are in the Baltimore-Washington metropolitan area - the old PDS in Hanover, Maryland, and the new PDS in Arlington, Virginia. The agency states that "the employee's relocation does not meet the distance requirement outlined in the example provided in the JTR [C4108]. However, [the relocation] would result in a shorter commute time due to the ready availability of public transportation."

The criteria for PCS allowances for same city or area moves for civilian employees of DoD, and the example upon which the agency relies, are set forth in JTR C4108, in effect in April 2001 when claimant's transfer was effective. This regulation reads as follows:

C4108 CHANGE OF STATION WITHIN SAME CITY OR AREA (FTR §302-1.3(a)(1) and §302-1.7)

Travel, transportation, and other related allowances, as applicable, shall be authorized/approved incident to a PCS even though the old and new PDSs are located within the same city or area provided that the PCS:

1. is in the Government's interest,
2. is to a new PDS which is at least 30 miles distant from the old PDS,
3. is not primarily for the convenience or benefit of the employee or at the employee's request, and
4. relocation of the residence is incident to the PCS.

In determining that the residence relocation is incident to the PCS, the authorizing/order-issuing official must consider:

1. commuting time and distances between the employee's residence at the time of PCS notification and the old and new PDSs, and
2. the commuting time and distance between a proposed new residence and the new PDS.

Ordinarily, a residence relocation is not incident to a PCS unless the employee's proposed new residence is at least 30 miles closer to the new PDS than the employee's old residence (i.e., the residence from which the employee daily commuted to the old PDS). (Example: An employee is transferred from PDS "A" to new PDS "B." The commuting distance from the employee's old

residence to new PDS "B" is 50 miles. The commuting distance from the employee's new residence to new PDS "B" is 20 miles. This satisfies the requirement for the new residence to be 30 miles closer to PDS "B" than the old residence). However, if the travel approving official determines that due to the commuting distance and/or time involved relocation of a residence is/was necessary incident to a PCS even though the 30 mile requirement is not met, the official may authorize/approve PCS allowances provided the one way commuting distance from the proposed new residence to the new PDS is at least 10 miles less than from the old residence to the new PDS. A claim for PCS allowances authorized in orders must satisfy the above conditions before reimbursement is allowed. If the employee changes the location of the proposed new residence, the travel-approving official must review the change for compliance with the above criteria. Non-compliance is grounds for denial of the various allowances.

JTR C4108 (Dec. 1, 2000).

With regard to the distance requirements in this JTR provision, the Board inquired as to the distances, travel times, and locations which are particular to the claimant's circumstances. The agency's responses confirmed that claimant's proposed move to Woodbridge, Virginia, and his corresponding commute to his new PDS in Arlington, Virginia, does not meet the distance requirements as set forth in the JTR above. As the distances resulting from claimant's proposed move do not meet the distance requirements of the JTR, the agency has determined that a move for such reasons is not a move incident to claimant's transfer, and has not authorized reimbursement of real estate expenses.

In Jeffrey R. Jenkins, GSBCA 15339-RELO, 00-2 BCA ¶ 31,066, we addressed the issues which arise when the change of station involves relatively short distances :

Consistent with the intent of Congress, we have held that expenses associated with any purchase or sale of a residence by a transferred employee should be paid by the agency only when the transaction is incident to the transfer. Whether a transaction meets this test is a question that arises most commonly when the change of station involves a move of relatively short distances. Menilao T. Dizon, GSBCA 15302-RELO (June 1, 2000); Vincent T. Arconati Jr., GSBCA 14485-RELO, 98-1 BCA ¶ 29,735; David M. Whetsell, GSBCA 14089-RELO, 98-1 BCA ¶ 29,610. In deciding whether an employee's residence relocation is incident to a transfer, an agency is to consider such factors as (1) commuting time and distance between the employee's residence at the time of notification of transfer and his old and new posts of duty; (2) commuting time and distance between the employee's new residence and new post of duty; and (3) the relationship in date between the transfer and the residence move. Arconati; Lisa F. Pierce, GSBCA 14268-RELO, 98-1 BCA ¶ 29,510 (1997). Whether a relocation was incident to a transfer is to be decided on a case-by-case basis. It is a discretionary call on the part of the agency, so we will uphold the agency's determination unless it is arbitrary or capricious. James T. Abbott, GSBCA 15025-RELO (May 11, 2000); Pierce.

00-2 BCA at 153,361.

In the instant case, claimant supports his request to move by emphasizing his family and financial situation, i.e., his new infant, his wife's need to stay at home and care for the infant, and the proximity of family members in Northern Virginia who would offer free child care and allow his wife to return to work. He asserts further that his proposed move would help to alleviate these family and financial pressures.

Clearly, the proposed move is prompted by the reassignment to Northern Virginia, as claimant no longer needs to commute to Maryland. The fact that the proposed move would be convenient to claimant, for family and financial reasons, does not necessarily lead to the conclusion that such a move, while prompted by a reassignment, is incident to the transfer. Since the distances resulting from claimant's proposed move do not meet the distance requirements of the JTR, the agency has determined that a move for such reasons is not a move incident to claimant's transfer. Under such circumstances, we cannot find that the agency's determination to deny claimant's request for authorization for reimbursement of real estate expenses arising from claimant's proposed move to the Northern Virginia area to be arbitrary or capricious. Because that determination was neither arbitrary nor capricious, it must stand. Jeffrey R. Jenkins.

Decision

The claim is denied.

ALLAN H. GOODMAN
Board Judge