

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

July 17, 2002

GSBCA 15735-RELO

In the Matter of RUDOLPH GOMEZ, JR.

Rudolph Gomez, Jr., Oklahoma City, OK, Claimant.

Capt. Erica N. Litwin, Assistant Staff Judge Advocate, and John G. Russell, Attorney Advisor, Office of the Staff Judge Advocate, Department of the Air Force, Brooks Air Force Base, TX, appearing for Department of the Air Force.

HYATT, Board Judge.

In June 2000, claimant, Rudolph Gomez, Jr., transferred from Kelly Air Force Base in San Antonio, Texas, to Tinker Air Force Base in Oklahoma City, Oklahoma. Mr. Gomez seeks reimbursement of real estate transaction expenses incurred in the sale of his home in San Antonio in June 1995. Claimant maintains he sold his home in anticipation of a transfer upon learning that Kelly Air Force Base would be closed pursuant to the recommendation of the Base Closure and Realignment Commission (BRAC). The Air Force disallowed his claim because the house was sold before a formal announcement was made by the President in July 1995, well before the decision to close the base became final, and before any offers of assistance in finding a new position were forthcoming.

Background

_____ Mr. Gomez explains that, in the early months of 1995, employees at Kelly Air Force Base were aware that the base was a candidate for closure. Because base closure had been previously considered and only narrowly avoided in 1993, many employees believed that there was a very definite likelihood that this time the base would be closed. In anticipation of this probability, and with the expectation that his job would be transferred to a base outside the San Antonio area, on April 10, 1995, Mr. Gomez contacted a real estate agent to put his home on the market. He states that he wanted to act expeditiously to sell his house before the market became saturated, which could adversely affect the value of his house. His agreement with the real estate agent provided that the home would be sold only if the base was closed. Mr. Gomez accepted an earnest money check from a prospective buyer on May 5, 1995. On June 22, 1995, the BRAC voted to recommend closure of Kelly Air Force Base.

This vote was widely reported in the local press. Upon learning of the BRAC's recommendation, Mr. Gomez instructed his agent to proceed with the sale. Closing occurred on June 30, 1995.

Although the BRAC voted to recommend closing Kelly Air Force Base in June, the President did not announce his acceptance of this recommendation until July 13, 1995. The decision to close Kelly Air Force Base did not become final until September 1995, however, when Congress failed to pass a joint resolution disapproving the BRAC's recommendations.

Mr. Gomez never enrolled in the priority placement program (PPP). He responded to a request made in 1999 for volunteers to transfer to Tinker Air Force Base along with the workload. Claimant's April 2000 orders for a permanent change of station (PCS) move to Tinker Air Force Base were issued more than four years after the base was officially slated for closure. Upon transferring, Mr. Gomez requested reimbursement of the costs of selling his home, arguing that the vote of the BRAC, as reported in the newspapers, constituted a sufficient official announcement of the base's future closure to entitle him to reimbursement. He also notes that a personnel specialist for the Air Force had stated that costs of selling a home would be recoverable if the sale was completed after the announcement of base closure.

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) (2000). 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) (2000). In addition, the agency must determine that the expenses to be reimbursed were incurred incident to the anticipated transfer. Connie F. Green, GSBCA 15301-RELO, 01-1 BCA ¶ 31,175; Kenneth E. James, B-256002 (July 2, 1996).

Although the general rule is that a transferred employee may not be reimbursed for expenses incurred prior to receipt of formal notification of a pending transfer, the Board and its predecessor, the General Accounting Office (GAO), have recognized that an exception may be made if the agency had manifested a clear "administrative intent" to transfer the employee. Green; Dennis A. Edwards, GSBCA 14943-RELO, 00-1 BCA ¶ 30,741. Both the Board and GAO have recognized that evidence other than travel orders may be acceptable to establish an administrative intent to transfer an employee. Michael J. Halpin, GSBCA 14509-RELO, 98-1 BCA ¶ 29,730, at 147,385. 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. Green.

The Department of Defense has incorporated this concept in the Joint Travel Regulations (JTR), which provide that an employee who is transferred in the interest of the Government may be authorized reimbursement of real estate expenses incurred in anticipation of a transfer (prior to issuance of formal written orders) so long as administrative intent to effect the transfer existed at the time the expense was incurred. JTR C14000-D.1.¹ The relevant JTR provision further states that the announcement of a base closure, accompanied by an offer to assist in finding new positions for affected employees, is considered to be clear evidence of intent to transfer those employees. Registration of employees in the PPP similarly constitutes evidence of an offer to assist affected employees to find new positions. Id.; see Alfred Voelkelt, GSBCA 14889-RELO, 99-1 BCA ¶ 30,362; Jerry W. Ward, GSBCA 13699-RELO, 97-1 BCA ¶ 28,926.

As the Air Force points out, the circumstances here are akin to those in Ward. In that case, the claimant had seen reports in the local press that the base at which he was then employed was on the list of bases proposed by the BRAC to be closed. He sold his house shortly after reading about the closures, and before the BRAC list became final. He also sold his home before he enrolled in the PPP. The Board held that this did not satisfy the JTR's proviso that expenses may be paid where the base closure has been announced and an offer to assist in finding a new position has been made. Similarly, at the time that Mr. Gomez sold his house, no definitive action had been taken as to base closure. The BRAC had simply voted to recommend that the base be closed. The President had not accepted the BRAC's recommendations and there was still a possibility that Congress would not approve the closure. Moreover, although Mr. Gomez correctly speculated that eventually the work would be transferred to another base and that he would have the opportunity to relocate, he has not shown that anyone in the Air Force with authority to offer assistance in locating a new position had communicated such an offer prior to the sale of his house.² The Air Force is correct in its conclusion that Mr. Gomez is ineligible to recoup the expenses of selling his home in 1995.

CATHERINE B. HYATT
Board Judge

¹ This provision remained essentially unchanged from 1995, when Mr. Gomez sold his house, through the spring of 2000, when he was finally transferred to Tinker Air Force Base.

² The fact that Mr. Gomez may, at some point, have understood from a personnel specialist that the expenses would be paid if incurred after the announcement of the base closing is neither here nor there. The specific individual he named did not begin to conduct briefings until 1999, and was not working at Kelly at the time Mr. Gomez sold his house. This does not show, then, that an offer to assist in finding a new position had been communicated to him prior to the sale of the house.

