

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

March 27, 2002

GSBCA 15760-RELO

In the Matter of EDWARD C. COLE

Edward C. Cole, Forest Supervisor, Lassen National Forest, Department of Agriculture, Susanville, CA, Claimant.

Melinda C. Rollo, Director, Financial Management, Forest Service, Department of Agriculture, Vallejo, CA, appearing for Department of Agriculture.

DeGRAFF, Board Judge.

Claimant, Edward C. Cole, an employee of the United States Department of Agriculture (USDA), accepted a transfer from Washington, D.C., to California. His claim concerns eligibility for a home marketing incentive payment in connection with the sale of his house in suburban Washington, D.C. Because the agency had not implemented an incentive payment program at the time Mr. Cole sold his house, the agency properly denied the claim.

Background

In 1999, after he accepted the transfer from Washington, D.C., Mr. Cole listed his house for sale and sold it within a few days. He transferred to California in January 2000. In mid-2001, Mr. Cole learned that USDA had recently implemented a home marketing incentive payment program, and he asked whether he could qualify for such a payment. USDA told Mr. Cole that incentive payments were made to employees who chose to use a relocation services company to sell their homes and who subsequently sold their homes themselves, thereby reducing the payment that the agency was obligated to make to the relocation services company. Mr. Cole responded that he should qualify for an incentive payment because he saved the agency money by selling his house himself even though he had not used a relocation services company. USDA referred this claim to the Board on behalf of Mr. Cole. In its referral letter, USDA says that Mr. Cole does not qualify for an incentive payment because he sold his house before February 22, 2001, when USDA implemented its home marketing incentive payment program.

Discussion

Federal agencies are permitted to enter into relocation services contracts with private firms to provide a variety of relocation services to employees who are transferred. These services include arranging for the purchase by a relocation services contractor of a transferred employee's residence at the old duty station under a home sales program. 5 U.S.C. § 5724c (2000); see Mark R. Tayler, GSBCA 15621-RELO (Feb. 14, 2002) (citing cases). The relocation services program also includes a home marketing incentive program. Under this program an agency may pay an employee who is transferred in the interest of the Government an amount to encourage the employee to aggressively market his or her residence at the former official station when (1) the residence is entered into a relocation services program under which the private contractor will purchase the house; (2) the employee finds a buyer who completes the purchase of the residence through the program; and (3) the sale of the residence results in a reduced cost to the Government. 5 U.S.C. § 5756.

Mr. Cole does not qualify for a home marketing incentive payment because he sold his house before USDA implemented a home marketing incentive payment program. Although the provisions for a home marketing incentive payment program have been part of the Federal Travel Regulation (FTR) since 1997, USDA was not required to offer home marketing incentive payments when Mr. Cole transferred because the FTR provided that it was within the discretion of each agency whether to establish a home marketing incentive payment program. 41 CFR 302-14.4 (2000). When Mr. Cole transferred to California, USDA had not yet implemented its home marketing incentive payment program, and the regulations that govern Mr. Cole's relocation benefits are those that were in effect when he transferred. 41 CFR 302-1.3(d). Because Mr. Cole sold his house before USDA implemented its incentive payment program, he is not eligible for an incentive payment. Donald L. Boyle, GSBCA 15080-RELO, 00-1 BCA ¶ 30,653; Randolph S. Reynolds, GSBCA 14728-RELO, 99-1 BCA ¶ 30,366.

The claim is denied.

MARTHA H. DeGRAFF
Board Judge