

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

August 6, 2002

GSBCA 15911-RELO

In the Matter of BEVERLY J. KOENIG

Beverly J. Koenig, Killeen, TX, Claimant.

C. Benjamin Pendleton, Chief, Vicenza Civilian Personnel Advisory Center, Civilian Human Resource Management Agency, Department of the Army, APO Area Europe, appearing for Department of Defense.

DeGRAFF, Board Judge.

When an agency cancels an employee's transfer, the agency is sometimes obligated to reimburse the employee for relocation expenses as if the transfer had been completed. However, an agency is not required to reimburse an employee unless the transfer was canceled due to circumstances beyond the employee's control, and unless the expenses were incurred in anticipation of the transfer and before the transfer was canceled.

Background

In late 2001, Beverly J. Koenig, an employee of the Department of Defense (DoD) in Texas, applied for several positions which held the potential for a promotion. One position was with the Civilian Personnel Advisory Center (CPAC) in Colorado and another was with the CPAC in Italy.

On December 18, 2001, the CPAC in Colorado offered Ms. Koenig a position and she accepted the offer. On January 8, 2002, the CPAC in Colorado issued travel orders that authorized Ms. Koenig to be reimbursed for certain expenses in connection with her transfer to Colorado. These expenses included real estate transaction expenses, storage of household goods for up to ninety days, and shipment of household goods using a Government bill of lading. On January 25, the CPAC in Colorado told Ms. Koenig that the position for which she had been selected would be abolished the following fiscal year and that if she decided to complete the transfer to Colorado, it seemed likely that she would be adversely affected by a reduction in force in the future. Ms. Koenig told the CPAC in Colorado that she wanted to think about the situation for a few days.

On January 25, the same day that the CPAC in Colorado told Ms. Koenig about the status of her position there, she received and accepted an offer for a position with the CPAC in Italy. On January 31, the CPAC in Italy issued travel orders that authorized Ms. Koenig to be reimbursed for certain expenses in connection with her transfer to Italy. These expenses included storage of household goods and shipment of household goods, but not real estate transaction expenses. On February 8, the CPAC in Italy rescinded the job offer that it had extended to Ms. Koenig because the position there had been abolished.

Ms. Koenig incurred real estate transaction expenses and household goods expenses that she attributes to the events summarized in the preceding paragraphs. Regarding her real estate transaction expenses, Ms. Koenig explains that she listed her house in Texas for sale, although she does not say when she did so. On January 7, 2002, she received an offer to purchase the house. She accepted the offer by signing a sales contract on February 1, and closed on the sale on February 28. Regarding her household goods expenses, Ms. Koenig explains that she arranged to have her goods moved into storage on February 28, 2002. We do not know how long the goods remained in storage.

Ms. Koenig asked the CPAC in Italy to reimburse her for her expenses, and the CPAC there decided that it could not do so. Ms. Koenig asked us to review this decision.

Discussion

If Ms. Koenig had sold her house in Texas incident to her transfer to Italy, she would not be entitled to be reimbursed for her real estate transaction expenses. This is so because when an agency transfers an employee from a duty station within the United States to a duty station outside the United States, the relevant statute provides that the agency can reimburse the employee for the expenses of selling a house at the old duty station only if the sale occurs after the employee receives official notification that she will not return to that duty station. 5 U.S.C. § 5724a(d)(2), (3) (2000).

If Ms. Koenig had completed her transfer to Colorado, DoD would have reimbursed her real estate transaction expenses. 5 U.S.C. § 5724a(d)(1). DoD would have also reimbursed her expenses if she had entered into the contract to sell her house in Texas in good faith (which we do not doubt) and in anticipation of a transfer to Colorado, and if the CPAC in Colorado had subsequently canceled the transfer due to circumstances beyond Ms. Koenig's control. Daniel E. Brown, GSBCA 15647-RELO, 01-2 BCA ¶ 31,617; Michael J. Halpin, GSBCA 14509-RELO, 98-1 BCA ¶ 29,730. Ms. Koenig, however, did not enter into the contract to sell her house in anticipation of a transfer to Colorado, because she entered into the sales contract after she accepted the offer to transfer to Italy instead of Colorado. In addition, it is not clear from our record whether the CPAC in Colorado actually canceled Ms. Koenig's transfer or, if it did, when the cancellation occurred. Assuming, however, that the CPAC in Colorado canceled Ms. Koenig's transfer after she entered into the sales contract, it likely did so because she decided to transfer to Italy instead of completing the transfer to Colorado, which was a circumstance within her control.

Regarding Ms. Koenig's household goods, if she had completed the transfer to Colorado, DoD would have arranged and paid for the shipment and storage of those goods. 5 U.S.C. § 5724(a)(2). If Ms. Koenig had incurred her moving and storage expenses in

anticipation of a transfer to Colorado or to Italy, and if DoD had subsequently canceled the transfer due to circumstances beyond her control, DoD would be obligated to reimburse her for her expenses as if the transfer had been completed. When Ms. Koenig incurred her household goods moving and storage expenses, however, she was not anticipating a transfer to Colorado because she had decided not to transfer there. Neither was she anticipating a transfer to Italy because that transfer had been canceled.

Although Ms. Koenig finds herself in an unfortunate situation, DoD is not obligated to reimburse her for the expenses she incurred when she sold her house in Texas or in connection with the movement and storage of her household goods. The claim is denied.

MARTHA H. DeGRAFF
Board Judge