

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

February 20, 2003

GSBCA 15943-RELO

In the Matter of DANE P. SUMMERVILLE

Dane P. Summerville, Mingo Junction, OH, Claimant.

Thomas X. McHugh, Assistant District Counsel, Pittsburgh District, United States Army Corps of Engineers, Pittsburgh, PA, appearing for United States Army Corps of Engineers.

PARKER, Board Judge.

Background

Dane Summerville's promotion in September 2000 required him to transfer to a new duty station which was located thirty-three miles away from his old duty station. In October, Mr. Summerville's employer, the United States Army Corps of Engineers, authorized permanent change of station costs, including reimbursement of real estate expenses. Mr. Summerville purchased a new residence that was only 4.4 miles closer to his new duty station than was his old residence. According to Mr. Summerville, the move reduced the commute to his new duty station by about thirty minutes.

Before Mr. Summerville purchased the new residence, he contacted the Corps' logistics office to confirm that his proposed purchase met applicable requirements for reimbursement. He was told that it did.

Ultimately, Mr. Summerville's claim for reimbursement of \$7532.88 in real estate expenses was rejected by the Corps on the basis that, under applicable regulations, the move to a residence only 4.4 miles closer to his new duty station could not be considered to be "incident" to Mr. Summerville's change of station. Mr. Summerville has asked the Board to review the Corps' decision.

Discussion

According to the Federal Travel Regulation (FTR), which governs travel and relocation matters involving federal employees, including civilian employees of the Department of Defense (DoD), when a change of official station involves a short distance,

travel and transportation allowances may be authorized "only when the agency determines that the relocation was incident to the change of official station." 41 CFR 302-1.7(a) (2000). In making this determination, agencies are required to take into consideration such factors as commuting time and distance between the employee's residence and his or her old and new posts of duty, as well as the commuting time and distance between a proposed new residence and the new post of duty. Id.

DoD's Joint Travel Regulations (JTR) implement and supplement the FTR for civilian DoD employees. We apply the provisions of the JTR to travel and relocation matters involving such employees except in cases where a provision of the JTR is in conflict with the FTR. C. Ray Taylor, GSBGA 13688-TRAV, 97-1 BCA ¶ 28,783.

In paragraph C4108 of the JTR, DoD has partially formalized its method for following the FTR's direction to authorize travel and transportation expenses for short distance changes of station when the agency determines that the relocation was incident to the change of official station:

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

In determining that the relocation of the residence is incident to the PCS [permanent change of station], the travel-approving official should take into consideration such factors as:

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

Ordinarily, a relocation of residence 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 (the residence from which the employee regularly commuted to and from work at 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 (Oct. 1, 2000).

Thus, DoD has determined by regulation that a move to a new residence that is less than ten miles closer to the new duty station than was the old residence may not be considered as a move incident to the change of official station. We think that the JTR rule is consistent with the FTR, and well within DoD's discretion to determine whether a move is incident to a transfer. Although the FTR requires agencies to consider the effect of a move on commuting time as well as the distance involved, implicit in the JTR rule is DoD's judgment that the amount of commuting time saved by such a short move is simply not significant enough to consider the move to be incident to the transfer. This judgment is not unreasonable, and we will not overturn it.

Mr. Summerville has asked us to consider in making our decision that someone in the Corps' logistics office advised him that the proposed move satisfied applicable requirements for reimbursement. Unfortunately, this fact does not permit us to grant Mr. Summerville's claim. It is well settled that erroneous advice given by Government officials cannot create a right to reimbursement in excess of statutory and regulatory requirements. Masood Badizadegan, GSBCA 14393-RELO, 98-2 BCA ¶ 29,789. Here, the regulation is clear and the claim, therefore, must be denied.

ROBERT W. PARKER
Board Judge