

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

December 3, 2002

GSBCA 15969-RELO

In the Matter of STEVEN P. GERGICK

Steven P. Gergick, Goose Creek, SC, Claimant.

Judy Hughes, Travel Pay Services, Systems and Procedures, Defense Finance and Accounting Service, Columbus, OH, appearing for Department of Defense.

DeGRAFF, Board Judge.

Steven P. Gergick asks that we review his agency's decision to deny his claim for reimbursement of the real estate transaction expenses he incurred when he sold his condominium at his old duty station in the United States in connection with his transfer to a new duty station outside the United States. Because Mr. Gergick sold his condominium before the agency officially notified him that he would not return to his old duty station, the agency correctly decided to deny his claim.

Background

In 1998, Steven Gergick was an employee of the Department of Defense (DoD) at the Naval Training Center in Orlando, Florida. In March, DoD notified Mr. Gergick that the training center was scheduled to close and that, as a result, he would lose his job. Mr. Gergick registered in DoD's priority placement program and in May, DoD notified Mr. Gergick that he had been selected to fill a position at the Marine Corps Air Station in Iwakuni, Japan. On June 3, he listed for sale the condominium he occupied in Orlando. On June 11, DoD issued travel orders to Mr. Gergick. The orders authorized him and his wife to travel at Government expense to his new duty station in Japan, and to incur a variety of other types of reimbursable expenses. The orders did not, however, authorize Mr. Gergick to incur reimbursable real estate transaction expenses. Mr. Gergick sold his condominium in December 1998. In 2001, Mr. Gergick returned to the United States to work for the Morale, Welfare, and Recreation Association, a non-appropriated fund instrumentality, at the Naval Weapons Station in Charleston, South Carolina.

In 2002, Mr. Gergick asked DoD to reimburse him for the real estate transaction expenses he incurred in connection with the sale of his condominium in Orlando in 1998.

DoD decided to deny Mr. Gergick's request because he sold his condominium before he was officially notified that he would not be returning to Orlando. Mr. Gergick asked us to review DoD's decision.

Discussion

Mr. Gergick contends that paragraph C14000-D.1 of the Joint Travel Regulations (JTR) provides a means for DoD to reimburse him for his real estate transaction expenses. This JTR paragraph explains that when an employee sells a house following a base closure announcement accompanied by an offer to assist the employee in finding a new position (such as by allowing the employee to register in the priority placement program), the employee may be entitled to reimbursement of real estate transaction expenses "if otherwise eligible under this Chapter." Paragraph C14000-D.1 does not allow DoD to reimburse Mr. Gergick because, as explained below, he is not "otherwise eligible" for reimbursement of his expenses.

The federal statute that governs Mr. Gergick's claim provides that when an agency transfers an employee from a duty station within the United States to a duty station outside the United States and then back to the United States, the agency can reimburse the employee for the expenses of selling a house at the first duty station in the United States only if the sale occurs after the employee receives official notification that he will not return to that duty station. 5 U.S.C. § 5724a(d)(2), (3) (2000). The JTR are consistent with the statute. JTR C14000-C, -D.2. For purposes of determining Mr. Gergick's eligibility for reimbursement of real estate transaction expenses, his duty station encompasses the condominium in Orlando from which he regularly commuted to and from work. JTR app. A.

The law is clear that Mr. Gergick is eligible to be reimbursed for the expenses he incurred when he sold his condominium in Orlando only if the sale occurred after he received official notification that he would not return there. According to JTR C14000-C.4 and -D.2, such official notification usually takes the form of permanent change of station orders. Indeed, something seemingly as definitive as the cancellation of an employee's return rights or placing a facility on the base realignment and closure list does not constitute official notification that the employee will not return to his former duty station, because there is still a chance that the employee will be able to return there at the conclusion of the overseas tour of duty. Mark H. Swenson, GSBCA 15504-RELO, 01-1 BCA ¶ 31,410; Robert J. Wright, GSBCA 15399-RELO, 01-1 BCA ¶ 31,368; Alfred Voelkelt, GSBCA 14889-RELO, 99-1 BCA ¶ 30,362.

Mr. Gergick is not eligible to be reimbursed for his real estate transaction expenses because he sold his condominium in Orlando before he received official notification that he would not return from Japan to Orlando. When he sold his condominium, DoD had not issued any permanent change of station orders telling him that he would not return to Orlando. Although DoD told him that the training center was scheduled to be closed, DoD did not attempt to predict whether another position in Orlando might be available for Mr. Gergick when he was ready to return from Japan. Even if there was nothing available for Mr. Gergick in Orlando when he left to go overseas, DoD could not have known what positions would be available when he was ready to return to the United States. When Mr. Gergick sold his condominium, DoD did not tell him where he might be posted after

Japan, much less provide him with official notification that he would not return to Orlando. Thus, according to the statute and its implementing regulations, Mr. Gergick is not eligible to be reimbursed for his real estate transaction expenses.

The claim is denied.

MARTHA H. DeGRAFF
Board Judge