



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

November 26, 2013

CBCA 3434-RELO

In the Matter of AMY PRESTON

Amy Preston, Alexandria, VA, Claimant.

Maurice Sims, Chief, PCS Processing Unit, Headquarters Air Force Personnel Center, Department of the Air Force, Randolph Air Force Base, TX, appearing for Department of the Air Force.

KULLBERG, Board Judge.

The Department of the Air Force (USAF) has requested an advance decision from this Board under 31 U.S.C. § 3529 (2006). In its request, the USAF states the following:

Due to the current financial reductions PCS [permanent change of station] moves have been delayed and employees have asked to waive PCS entitlements but have been denied due to – 5 U.S.C. 5724 (if move is in government[']s interest, the government MUST pay certain PCS allowances) and [Joint Travel Regulations (JTR) C5005-B] (Budget constraints do not justify PCS allowance denial).

The USAF seeks guidance as to whether an employee can waive his or her entitlement to payment for relocation expenses when the transfer is in the Government's interest under the following scenarios: (1) the employee transfers alone; (2) the employee is transferring with a civilian employee spouse or partner whose transfer is being paid by the Government; or (3) the employee is transferring with a spouse or partner who is transferring under military

orders. Additionally, the USAF seeks guidance as to whether a waiver agreement under such circumstances would be enforceable if the employee later sought to claim the costs of relocation. We only address, however, the issue presented by the USAF as it relates to Ms. Amy Preston, the employee for whom an advance decision has been requested.

Statute provides that the Government shall pay various costs for relocating an employee and his or her family to a new duty station when that employee's transfer is in the interest of the Government. 5 U.S.C. §§ 5724, 5724a. Those costs can include transportation, shipment of household goods, real estate transaction costs, and subsistence expenses. *Id.* Such benefits are not available when the transfer is primarily for the convenience of the employee. *Id.* § 5724(h). The JTR states that "PCS allowances must be paid (par. C5070) to an employee transferred from one PDS [permanent duty station] for another permanent duty if the transfer is in the GOV'T's interest." JTR C5005-B. "Budget constraints do not justify PCS allowances denial." *Id.* C5005-B.3.b. The Federal Travel Regulation (FTR), which is also applicable in this case, provides that an employee is entitled to "relocation expense allowances" when he or she is "transferring in the interest of the Government from one agency or duty station to another for permanent duty." 41 CFR 302-1.1(b) (2012) (FTR 302-1.1(b)).

The determination of whether a transfer is in the interest of the Government is a matter within an agency's discretion, and such discretion will be upheld unless it is "arbitrary, capricious, or clearly erroneous under the facts of the case." *Riyoji Funai*, GSBCA 15452-RELO, 01-1 BCA ¶ 31,342, at 154,778 (citing *Eugene R. Platt*, 59 Comp. Gen. 699 (1980), *modified on reconsideration*, 61 Comp. Gen. 156 (1981)). Once an agency determines that an employee's transfer is in the interest of the Government, "[t]he reimbursement of an employee for relocation expenses . . . is a right pursuant to law and regulations." *LaVerle E. Olivier*, GSBCA 16598-RELO, 05-1 BCA ¶ 32,959, at 163,283 (quoting *Bruce E. Stewart*, B-201860 (Aug. 27, 1982)). An agency, consequently, is required by law to consider an employee's claim for the costs of relocation and reimburse those costs in accordance with the regulations in effect at the time of transfer. *Id.*

When an agency determines that a transfer is in the interest of the Government, it does not have the authority to nullify payment of the costs of relocation by entering into an agreement with the employee to waive that payment. It has been long recognized that "[a]n agreement to waive statutory pay or allowances is not enforceable." *James R. Gray*, 3 Comp. Gen. 207, 208 (1923) (citing *McMath v. United States*, 248 U.S. 151 (1918); *United States v. Andrews*, 240 U.S. 90 (1916); *Glavey v. United States*, 182 U.S. 595 (1901); *Reed v. United States*, 56 Ct. Cl. 500 (1921); *Bancroft v. United States*, 56 Ct. Cl. 218 (1921), *aff'd*, 260 U.S. 706 (1922); *Katzer v. United States*, 52 Ct. Cl. 32 (1917)). Any such waiver amounts to placing an invalid condition on an employee's transfer, which is not binding on

the employee even with the employee's consent. *LaVerle E. Olivier*, 05-1 BCA at 163,283; *Ross K. Richardson*, GSBCA 15286-RELO, 00-2 BCA ¶ 31,131, at 153,773.

The USAF states that the employee in this matter, Ms. Preston, is transferring in the interest of the Government. She is entitled to payment of her relocation costs, but the USAF also asserts that financial constraints are delaying her transfer. For that reason, the USAF states that she wishes to waive payment for the costs of relocation. As discussed above, any agreement between Ms. Preston and the USAF to nullify her entitlement to payment for the costs of relocation under statute and regulation would not be enforceable. The USAF, therefore, should deny Ms. Preston's request for a waiver of payment for relocation costs.

H. CHUCK KULLBERG
Board Judge