UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

June 12, 2014

CBCA 3832-RELO

In the Matter of MATTHEW C. HAWK

Matthew C. Hawk, Aguadilla, PR, Claimant.

Johnny Morales, Director, Caribbean Air and Marine Branch, Customs and Border Protection, Department of Homeland Security, Aguadilla, PR, appearing for Department of Homeland Security.

WALTERS, Board Judge.

Claimant, Matthew C. Hawk, had submitted several claims, which we considered in conjunction with another employee's claims in a decision issued on September 10, 2013, *Wilberto M.Sanchez,* CBCA 3397-RELO, et al., 13 BCA ¶ 35,409. Among the claims Mr. Hawk presented was one for the reimbursement of travel and transportation in connection with his anticipated termination of overseas service with the Department of Homeland Security, Customs and Border Protection (CBP) Carribean Air and Marine Branch in Aguadilla, Puerto Rico, and his return to his permanent residence in Tennessee. Because Mr. Hawk had yet to resign from the agency, we found that claim premature. Although our initial ruling indicated, by way of dictum, that we might not grant the claim even if it were ripe for decision, we advised on reconsideration, by decision dated September 17, 2013, that we would give that claim a fresh look once it was properly submitted for our review. *Matthew C. Hawk*, CBCA 3399-RELO, 13 BCA ¶ 35,410. That claim was presented once again to the Board on April 18, 2014. For the reasons explained below, we grant the claim.

Discussion

As explained in our initial decision, Mr. Hawk, a resident of Nashville, Tennessee, in 2009 applied for one of several positions with the CBP as an air interdiction agent. The announcement to which he had responded explicitly stated that relocation expenses would not be paid. When he was notified in May 2010 that he was to report for duty with the CBP Carribean Air and Marine Branch in Aguadilla, Puerto Rico, the agency did not provide him with relocation benefits or ask, in exchange for such benefits, that he execute a service agreement that would require him to serve in Puerto Rico for any particular amount of time. In July 2012, however, claimant was granted ten days of home leave and his request for associated renewal agreement travel reimbursement for himself and his spouse and children to visit their Tennessee residence was approved, even though he was not asked to execute a service agreement to commit himself to a period of further service to the CBP in Puerto Rico.

Claimant presented for the Board's review last year several claims, including one for separation return travel. We had dismissed that claim as premature, since he had not ended his service with the agency and had not incurred any costs to relocate back to his residence of record in Tennessee. When he sought reconsideration of that dismissal, he wanted the Board to render an advance decision on the claim. In response to that request, we stated:

> Although the Board has jurisdiction to provide an advance ruling on a claim for travel or relocation expenses at the request of an agency, 31 U.S.C. § 3529 (2006); *Linda S. Hall*, CBCA 2703-RELO, 12-1 BCA ¶ 35,011, we do not have authority to provide such a ruling at the request of a claimant. As of this time, the agency has not sought an advance ruling on return travel for Mr. Hawk. If and when the claim for return travel is properly put before us for review, i.e., either after Mr. Hawk completes his service and moves from Puerto Rico back to Tennessee or upon receipt of a request from the agency for an advance ruling, we will consider that claim.

Hawk, 13 BCA at 173,708.

At present, claimant has not resigned from the agency or incurred actual costs to relocate back to Tennessee. Nevertheless, in early April 2014, claimant provided the agency with a memorandum in which he stated a "*clear intent to resign*" from the CBP, and has indicated that his resignation will be in the near future. This was the same situation that was presented in *William G. Sterling*, CBCA 3424-RELO, 13 BCA ¶ 35,438, where we ruled that the agency had improperly rejected the employee's claim for relocation costs back to his residence in the continental United States (CONUS). The agency again has refused to entertain Mr. Hawk's claim for relocation expenses and now seeks full Board consideration

of that claim and essentially a reversal of the position the Board expressed in *Sterling*. Though our rules do not contemplate full Board consideration of a travel or relocation matter, we have considered the agency's arguments and find them unconvincing.

The agency correctly observes that the governing statute, 5 U.S.C. § 5722, affords an agency discretion as to the payment of relocation expenses, and points to the permissive language of the statute, which states that "an agency *may* pay from its appropriations . . . travel expenses of a new appointee . . . to the place of employment outside the continental United States" and "these expenses on the return of the employee from his post of duty outside the continental United States . . . ." (Emphasis added.) The agency posits that the implementing regulations promulgated by the Administrator of General Services, i.e., the Federal Travel Regulation (FTR), are consistent with the statute's discretionary language and do not mandate that an agency provide for return travel and transportation costs if it had elected not to furnish relocation costs for the employee at the time of his recruitment. In this regard, it relies heavily on the following language of one FTR provision, which echoes the statute's "may" language:

> Am I eligible to receive relocation allowances for overseas assignment and return travel?
>
> You *may* be eligible to receive relocation allowances for overseas assignment and return travel if you are: . . . [a] new appointee to a position OCONUS and at the time of your appointment your residence is in an area other than your post of duty.

41 CFR 302-3.207 (emphasis added).

In *Sterling*, as here, the employee's permanent residence was within CONUS when he was recruited for a position as an air interdiction agent in Aguidilla, Puerto Rico. There, too, the announcement clearly advised that "[r]elocation expenses will not be paid." In *Sterling*, we found, based on the statute and FTR, that the employee did not have a right to reimbursement of his initial relocation costs from his home of residence to Puerto Rico and that the CBP had discretion to refuse payment of those costs. We did find, however, that the employee was entitled to reimbursement for renewal agreement travel expenses to and from his CONUS residence, even though he had not executed a renewal service agreement that would commit him to a further period of service in Puerto Rico. We did so because the employee in *Sterling* clearly had served the CBP in Puerto Rico for a period of time that would qualify him for tour renewal travel per the agency's Leave Handbook. In this regard, we noted that Comptroller General and prior Board precedent supports the proposition that "an employee's entitlement to renewal agreement travel is not defeated by the fact that he

may have served in an overseas area without a written agreement," so long as the employee "has served at such post for the period normally required of other employees of the agency serving in the same area." *Sterling*, 13 BCA at 173,815; *see Oscar G. Rivera*, GSBCA 16332-TRAV, 04-2 BCA ¶ 32,735; *George E. Lingle*, GSBCA 13946-TRAV, 97-2 BCA ¶ 29,292; *Estelle C. Maldonado*, 62 Comp. Gen. 545 (1983); *see also Jorge J. Martinez*, CBCA 2265-RELO, 11-1 BCA ¶ 34,704. Importantly, in the present case, renewal agreement travel reimbursement was approved for Mr. Hawk. This was so, even though he had been working in Puerto Rico without a service agreement and even though he had not executed a renewal service agreement that would commit him to a period of additional service in Puerto Rico beyond his home leave and tour renewal travel.

In terms of the employee's claim for separation return travel in *Sterling*, we considered the following language of another FTR provision, one that the agency concedes appears to suggest that payment of separation relocation expenses from an overseas post is mandatory and not merely discretionary:

> **Must my agency pay for return relocation expenses for my immediate family and me once I have complete my duty OCONUS [outside the continental United States]?**
>
> Yes, once you have completed your duty OCONUS as specified in your service agreement, your agency must pay one-way transportation expenses for you, for your family member(s), and for your household goods.

41 CFR 302-3.300. The agency urges that the mandatory requirement for relocation expense payment under this FTR provision only arises if the employee has executed a service agreement in conjunction with the extension of relocation benefits for the employee's initial relocation OCONUS and has completed the tour of duty specified under that agreement. In *Sterling*, we rejected that notion, and refused to treat return relocation expenses any differently than renewal agreement travel, seeing "no reason why [the absence of a service agreement] should defeat a claim for return travel . . . when an employee has served OCONUS at least the length of time generally held by the agency to constitute a tour of duty." *Sterling*, 13 BCA at 173,816. Regardless of any indication in our initial decision in *Sanchez* that we might rule otherwise, we find the rationale for our decision in *Sterling* (which was issued after *Sanchez*) to be both reasonable and proper. Since Mr. Hawk has served OCONUS in Puerto Rico for more than what would ordinarily constitute a tour of duty for the CBP, he will be entitled to be paid for his separation relocation expenses back to his CONUS residence once his resignation is effective, notwithstanding the absence of an executed service agreement.

Decision

For the foregoing reasons, we hold that, upon claimant's termination of federal service, he will be entitled to payment of his costs of return travel for himself and his wife and family, and of the costs of transporting his household goods from Puerto Rico to his permanent place of residence in CONUS, in accordance with the provisions and limitations of the Federal Travel Regulation.

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RICHARD C. WALTERS
Board Judge