UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

February 9, 2015

CBCA 4081-RELO

In the Matter of ANDREW R. LOW

Andrew R. Low, Manassas Park, VA, Claimant.

Gwendolyn T.D. Franks, Communications-Electronics Command, Department of the Army, Fort Huachuca, AZ, appearing for the Department of the Army.

SHERIDAN, Board Judge.

Claimant, Andrew R. Low, seeks payment of $3290 which he paid to have his personally owned vehicle (POV) returned to the United States after his management- directed reassignment (MDR) to Stuttgart, Germany, was canceled. When an agency cancels a transfer due to circumstances beyond an employee's control, it should reimburse the employee for expenses that it would have reimbursed had the transfer been completed, provided the employee incurred the expenses before the agency canceled the transfer, in good faith and in anticipation of the transfer.

Background

Claimant, Andrew R. Low, was selected for an MDR to the United States Army Information Systems Engineering Command's (USAISEC) European Field Office in Stuttgart, in the summer of 2013. A request for personnel action (RPA) was created for reassignment of claimant to the National Capital Region Engineering Directorate (NCRED) in Stuttgart. On August 6, 2013, claimant signed a service agreement for transfer of civilian employees outside the continental United States (OCONUS). The form established eligibility for travel and transportation allowances for an OCONUS permanent change of station (PCS)

in exchange for service of at least twelve months.[1] A service agreement is required before any transportation costs associated with the transportation of a personal vehicle can be paid by the Government. 41 CFR 302-2.13 (2013). No duty station was identified on the service agreement that claimant executed.

Claimant's PCS orders to Stuttgart were issued on August 8, 2013, with an effective date of September 22, 2013. Transportation of claimant's POV was authorized on these orders. Claimant delivered his POV to the Baltimore Vehicle Processing Center for shipment to Stuttgart on September 9, 2013.

On September 16, 2013, claimant was informed he would not be moving to Stuttgart because the gaining command did not have funds to cover claimant's position. He discussed the situation with the USAISEC European Field Office Chief and the USAISEC Fort Belvoir Director and discovered that there were three potential positions expected to open up in Wiesbaden, Germany. According to claimant, the three men reached a "gentlemen's agreement" that claimant would take one of the Wiesbaden positions once they had been approved by the Communications-Electronics Command (CECOM). At this point, claimant's POV was already in transit, and since claimant assumed that per the "gentlemen's agreement" he would be assigned to Wiesbaden, he had his vehicle re-routed to Wiesbaden, where it was stored in USAISEC's contractor's, TRANSCAR's, lot. On September 17, 2013, a request was made to change claimant's RPA to Wiesbaden and that his PCS orders be amended to remove all authorizations except transportation of his POV.

The new positions were approved, and on December 17, 2013, claimant was offered one of the Wiesbaden positions. Around that time, claimant also found out his wife was pregnant. Claimant took some time to discuss options with his wife, and on December 31, 2013, he informed USAISEC that he would not be accepting the Wiesbaden position. According to claimant, he also informed USAISEC that he wanted his POV returned.

USAISEC paid for the transit of claimant's POV to Wiesbaden and its storage at TRANSCAR's lot. However, USAISEC decided that there was "no authority to amend the orders to return the vehicle to the United States at this point because there is no . . .

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[1] To receive benefits, employees who travel for the benefit of the Government are required to sign a service agreement stating they will remain in Government service a specified period of time after they have relocated. 41 CFR 302-2.13 (2013). If an employee violates the terms of a service agreement (other than for reasons beyond an employee's control and which are accepted by the agency), employees incur a debt due to the Government and must reimburse all costs that the agency has paid toward relocation expenses. *Id*. 302-2.14.

Government interest in doing so." Ultimately, USAISEC decided claimant was responsible for making his own arrangements to get his POV returned to the United States. Claimant accomplished this though TRANSCAR at a cost of $3290. Claimant picked up his POV in Baltimore on April 15, 2014. The agency takes the position that there is no fiscal authority for it to pay for the claimed $3290.

Discussion

USAISEC analyzes this matter as a violation of a service agreement and cites the Defense Department's Joint Travel Regulations (JTR) for the proposition that an employee who "does not arrive at the new [duty station] . . . is financially liable to reimburse" the agency for the transportation allowances paid by the agency in anticipation of the employee's change of duty station. JTR C5852-A.2. While we agree generally with this provision, the circumstances here are unique.

Claimant executed a service agreement so that his POV could be shipped to Stuttgart; he was issued PCS orders to Stuttgart; and his POV was placed in transit to Stuttgart. After his POV was in transit to Germany, the agency decided not to transfer claimant to Stuttgart and changed his travel orders to cancel the Stuttgart PCS move. Because of agency actions, claimant could not accomplish the PCS move to Stuttgart. While claimant verbally agreed to accept a future posting in Wiesbaden, PCS orders were not issued and no service agreement was signed for the Wiesbaden move. As a result of the cancellation of claimant's PCS orders to Stuttgart, the service agreement signed in connection with the proposed move never fully took effect. Claimant, by action or inaction, did not violate the service agreement he executed.

Both the General Services Board of Contract Appeals (GSBCA), our predecessor board for travel and relocation matters, and the General Accounting Office (GAO), which considered relocation expense reimbursement claims until 1996, adopted a general rule to resolve employee claims grounded in the cancellation of a transfer: When an agency cancels a transfer due to circumstances beyond an employee's control, it should reimburse the employee for expenses that it would have reimbursed had the transfer been completed, provided the employee incurred the expenses before the agency canceled the transfer, in good faith and in anticipation of the transfer. *Noreen Kinnavy*, GSBCA 15513-RELO, 02-1 BCA ¶ 31,777; *Michael J. Halpin*, GSBCA 14509-RELO, 98-1 BCA ¶ 29,730; *accord Terry M. Neeley*, GSBCA 14930-RELO. 99-2 BCA ¶ 30,496; *Orville H. Myers*, 57 Comp. Gen. 447 (1978); *Dwight L. Crumpacker*, B-187405 (Mar. 22, 1977). We note that the agency has followed this rule to the extent it paid for shipment of claimant's POV to Germany, but has declined to reimburse claimant for the costs he paid to get the POV back to the United States.

Claimant's PCS transfer to Stuttgart was canceled through no fault of his own, after his POV was placed in transit to Germany. His POV was shipped to Wiesbaden and, ultimately, when claimant later decided not to transfer to Germany, he incurred $3290 in costs to have the POV shipped back to Baltimore. The fact that claimant was offered and even initially indicated a willingness to accept a future position to be created in Wiesbaden does not, under the circumstances presented here, affect his right to have his POV returned to the United States at government expense. Here, there were no PCS orders or service agreement in effect for a transfer to Wiesbaden. Even though it was claimant's own decision ultimately not to accept the Wiesbaden position, he still has the right to have his POV returned to the United States because it was the agency that canceled the original PCS move. USAISEC's argument that because claimant violated the service agreement, he should be denied the costs associated with the POV's return to the United States is not compelling.

Decision

The claim for $3290 is granted.

PATRICIA J. SHERIDAN
Board Judge