



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

February 19, 2016

CBCA 4724-RELO

In the Matter of WILBERTO M. SANCHEZ

Wilberto M. Sanchez, Nokesville, VA, Claimant.

Suzanna Hartzell-Ballard, Office of Assistant Chief Counsel, Customs and Border Protection, Department of Homeland Security, Indianapolis, IN, appearing for Department of Homeland Security.

ZISCHKAU, Board Judge.

Wilberto M. Sanchez, the claimant, challenges the determination of the Department of Homeland Security that he is not entitled to be paid relocation expenses in connection with his transfer from Aguadilla, Puerto Rico, to Manassas, Virginia. The agency concluded that the reassignment was in the interest of the employee rather than in the interest of the Government based on a memorandum the claimant signed, which provided that he was requesting an unfunded lateral reassignment to Virginia.

The claimant made a claim in 2013 seeking to compel the agency to provide him a funded lateral transfer to Virginia prior to his leaving Puerto Rico. We denied the claim based on a finding that claimant's anticipated transfer was for the convenience of the employee rather than in the interest of the Government. The agency argues that our prior decision denying the 2013 claim is *res judicata*.

In the present case, the claimant seeks reimbursement for his relocation expenses actually incurred when he transferred from Puerto Rico to Virginia in October 2013. The claimant argues that he is entitled to reimbursement for the transfer. We find that the claimant's transfer was primarily for the employee's convenience and benefit, and thus the applicable statute and regulations preclude the agency from reimbursing the claimant's relocation expenses for his transfer to Virginia. Accordingly, we deny the claim.

Background

On June 28, 2013, while serving with Customs and Border Protection (CBP) in Puerto Rico, the claimant submitted to his agency a signed memorandum stating:

I recently applied for a voluntary unfunded transfer from the [Caribbean Air and Marine Branch] to the [National Capital Region]. I have been informed that the availability of funding for future relocations is undetermined and future announcements may offer relocation compensation. However, in order to take advantage of the unfunded relocation opportunity and move at this time, I desire to complete the previously requested reassignment with the understanding that no relocation expenses associated with this transfer will be paid by the agency. I understand that I am responsible for incurring all relocation costs associated with the requested transfer and I am not entitled to reimbursement by the agency.

The agency responded to the claim before the Board, arguing that the claimant was not entitled to a funded transfer because he had agreed to a unfunded transfer, and attaching the claimant's recently signed memorandum agreeing to an unfunded transfer. In a July 1, 2013 reply, the claimant stated that he felt coerced into signing the June memorandum because the agency had repeatedly denied his requests for funded transfers and he believed he would never get transferred CONUS unless he signed the memorandum.

In a decision dated September 10, 2013, the Board denied his claim and concluded that his transfer to Virginia – being in the nature of a lateral transfer rather than a promotion – was presumed to be in the interest of the employee, and the claimant had failed to overcome this presumption with evidence that the transfer was primarily in the interest of the Government. *Wilberto M. Sanchez*, CBCA 3397-RELO, et al., 13 BCA ¶ 35,409.

The claimant's June 28, 2013 request for an unfunded lateral transfer to Virginia was subsequently approved by the agency. Effective October 20, 2013, the claimant transferred from Puerto Rico to Virginia.

On April 27, 2015, the claimant filed his current claim, arguing that he should receive reimbursement for his relocation expenses for his transfer to Virginia, in light of more recent decisions from our Board that have held that employees who have separated from government service with CBP in Puerto Rico are entitled to relocation expenses to their home of record in the United States if they have served the time that would be required under a service agreement. *See, e.g., William G. Sterling*, CBCA 3424-RELO, 13 BCA ¶ 35,438, *reconsid. denied*, 14-1 BCA ¶ 35,483 (2013).

Discussion

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 (2012); *Amy Preston*, CBCA 3434-RELO, 13 BCA ¶ 35,465. Such benefits are not available when the transfer is primarily for the convenience of the employee. 5 U.S.C. § 5724(h) (“When a transfer is made primarily for the convenience or benefit of an employee, including an employee in the Foreign Service of the United States, or at his request, his expenses of travel and transportation . . . may not be allowed or paid from Government funds.”). The Federal Travel Regulation (FTR), which implements these statutory provisions and is applicable to all government employees, 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, and your new duty station is at least 50 miles distant from your old duty station.” 41 CFR 302-1.1(b) (2013) (FTR 302-1.1(b)). FTR 302-1.2(e) provides that an employee is not eligible for relocation expenses if the employee is not a person covered in FTR 302-1.1.

In our 2013 *Sanchez* decision, we denied the claimant’s contention that he would be entitled to reimbursement for the costs of a lateral transfer. The claimant now attempts to avoid that ruling by arguing that he is covered by FTR 302-1.1. He relies on FTR 302-1.1(e), which provides that an employee is generally eligible for relocation expenses if he is “[a]n employee returning to his/her place of residence after completion of a prescribed tour of duty for the purposes of separation from Government service or separation from the overseas assignment for reassignment to the same or different Government agency.” Claimant argues that he has completed his prescribed tour of duty for purposes of separation from the overseas assignment for reassignment to the same agency, exactly as specified in FTR 302-1.1(e). And relying on our decision in *Sterling*, he further argues that the agency may not refuse to fund a separation from an overseas assignment.

We do not agree with the claimant’s analysis. FTR 302-1.1(e) cannot be read to override the language of 5 U.S.C. § 5724(h), which prohibits funding relocation costs of employees when a transfer is made primarily for the convenience or benefit of an employee. Thus, FTR 302-1.1 must be read in conjunction with 5 U.S.C. § 5724(h) to exclude eligibility for relocation expenses where the transfer or assignment is made primarily for the convenience or benefit of an employee. In this case, claimant’s transfer was made primarily for his convenience and benefit. Although claimant attempts to argue that his transfer was primarily in the Government’s interest, he has not met his burden of showing that his transfer

was primarily a management-directed transfer rather than a transfer primarily at the employee's behest. Accordingly, we deny the claim.

JONATHAN D. ZISCHKAU
Board Judge