



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

February 25, 2010

CBCA 1737-RELO

In the Matter of FRED L. TRIBBITT

Fred L. Tribbitt, Memphis, TN, Claimant.

Cheryl Holman, Chief, PCS Travel Division, Financial Services Center, Department of Veterans Affairs, Austin, TX appearing for Department of Veterans Affairs.

SHERIDAN, Board Judge.

Claimant, Fred L. Tribbitt, is a former employee of the Department of Veterans Affairs (VA) who was issued permanent change of station (PCS) travel orders authorizing travel from Memphis, Tennessee, to Decatur, Georgia. He took a voluntary retirement approximately ten months after he arrived in Georgia. He has asked this Board to review the VA's determination that he must return the \$4036 travel advance associated with his PCS travel. We find that the VA did not abuse its discretion in determining that claimant had failed to fulfill his one-year service agreement and, therefore, was required to repay the travel advance.

Background

Prior to relocating, claimant signed a service agreement on January 19, 2007, committing to remain in government service for twelve months after relocating. The agreement provided that if claimant failed to remain in government service for twelve months, he agreed to "repay the government for costs of travel and transportation expenses advanced."

On March 2, 2007, claimant was issued PCS travel orders which, among other things, authorized a travel advance to assist with relocation expenses associated with the move. He received a travel advance of \$4036.

Claimant relocated and was employed by the Atlanta VA Medical Center from February 18, to December 14, 2007, whereupon he took a voluntary retirement. On August 28, 2009, the VA informed claimant he was required to repay the \$4036 advance because he had not fulfilled his one-year service agreement. Claimant sought review of the VA's decision before this Board.

Discussion

When a government employee is transferred in the interest of the Government, he or she is entitled to be reimbursed for relocation costs. 5 U.S.C. § 5724(a) (2006). The Federal Travel Regulation (FTR) states that reimbursement for such relocation costs is conditioned upon an employee entering into a service agreement to remain in government service for a period of not less than twelve months. 41 CFR 302-2.13 (2007). If an employee fails to remain in government service for the required period he or she is subject to the following penalty:

Will I be penalized for violation of my service agreement?

Yes, if you violate a service agreement (other than for reasons beyond your control and which must be accepted by your agency), you will have incurred a debt due to the Government and you must reimburse all costs that your agency has paid towards your relocation expenses

41 CFR 302-2.14.

The claimant bears the burden of proof in a relocation case. *Gary Twedt*, GSBCA 16905-RELO, 06-2 BCA ¶ 33,433.

Claimant asserts that he is a "70% service-connected disabled Vietnam Veteran" and his disability, post traumatic stress disorder [PTSD] and a chronic back ailment, forced him to retire from federal service. He represents that at the time he accepted employment at the Atlanta VA Medical Center and signed the service agreement, he had intentions of "completing the assignment and continuing to pursue further employment, but my illness grew worse over a five-month period." He claims he has a ruptured disk in his back and states:

Some days I cannot get out of bed and some days I cannot walk. These injuries forced me to retire. I cannot work anymore. I have attached a copy of my orthopedic surgeon's comments when my back first started

giving me trouble, and a copy of my PTSD report. These are the reasons I could not continue to work at the Atlanta VA Medical Center and these are the foundation for my claim. To continue working would have caused an undue hardship upon me.

To support his assertions, claimant offers a May 18, 2006, initial evaluation report for PTSD that concludes that “[i]t appears that [claimant’s] PTSD has severely and adversely impacted his quality of life over the years.” A report of June 11, 2003, shows claimant presenting with pain in the lower extremities that started ten days before, after he worked on his car. Claimant did not make his follow-up consult with orthopedic surgery scheduled for September 5, 2003.

This Board has recognized that it is within an agency’s discretion to determine whether a separation from service which appears to be voluntary was for a reason beyond the employee’s control and acceptable as a reason for not fulfilling the terms of a service agreement. *David F. Lytal*, CBCA 1433-RELO, 09-1 BCA ¶ 34,090; *Paula A. Shimata*, CBCA 1135-RELO, 08-2 BCA ¶ 33,901. We will not question the agency’s exercise of its discretion so long as it has a reasonable basis. *Melinda K. Kitchens*, GSBCA 16639-RELO, 05-2 BCA ¶ 33,062; 46 Comp. Gen. 724 (1967); Comp. Gen. Dec. B-174823 (Jan. 26, 1972). Accordingly, our inquiry is limited to whether the agency properly exercised its discretion.

We reviewed the medical reports submitted by claimant. The record does not support a finding that claimant was forced to retire because of his medical conditions or that his retirement was for a reason beyond his control. At the time of his retirement, it appears that claimant made no inquiry regarding whether he would be held to the terms of the service agreement, nor did he assert that his retirement was for a reason beyond his control.

When claimant resigned from federal service he was aware of the requirements of the separation agreement. Apparently, claimant simply took the chance that the VA would not enforce the agreement. However, the VA did not abuse its discretion in holding claimant to its terms, and claimant has failed to sustain his burden of proof that he is entitled to retain the advanced travel costs.

Decision

The claim is denied.

PATRICIA J. SHERIDAN
Board Judge