



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

January 7, 2011

CBCA 2188-TRAV

In the Matter of DONAVAN L. MAY

Donavan L. May, Umatilla, OR, Claimant.

Anne M. Schmitt-Shoemaker, Deputy Director, Finance Center, United States Army Corps of Engineers, Millington, TN, appearing for Department of the Army.

GOODMAN, Board Judge.

Claimant, a civilian employee of the Department of Defense (DoD), United States Army Corps of Engineers (USACE), was issued orders for a permanent change of station (PCS) and entered into a service agreement. For personal reasons, claimant did not accomplish the PCS and thereafter the agency established a debt for costs incurred in transporting claimant's household goods (HHG) to the new duty station. Claimant has filed a claim at this Board contesting this debt collection.

Background

Claimant was issued travel orders dated October 19, 2007, for a PCS move from Fort Wainwright, Alaska, to St. Louis, Missouri, with a reporting date at the new duty station of November 11, 2007. His separation agreement contained the following provisions:

I will remain in Government service for a minimum of 12 months beginning with the date I report for duty at my new or first PDS, unless I am separated for reasons beyond my control that are acceptable to the agency concerned.

If I fail to serve the minimum required period of time, . . . I am obligated, and will, upon demand, repay to the Government a sum equivalent to what the

Government paid for travel and transportation expenses and related allowances associated with the transfer of myself and my dependants.

Before his reporting date at the new duty station, claimant experienced a family emergency.¹ He was informed by the Human Resources office of the agency that the supervisor of his new position was “willing to give [claimant] a couple of weeks, but if [claimant was] unsure about coming to work, he can’t let this position sit and wait.”

Claimant requested leave without pay (LWOP) for twelve weeks, from December 26, 2007, through March 19, 2008, pursuant to the Family Medical Leave Act. He then resigned from the new position on March 20, 2008, as he alleges he was unable to accomplish his PCS at that time.

On April 20, 2008, claimant was hired by the agency for a position in the USACE Louisville (Kentucky) District.

Two years later claimant received a letter from the agency, dated August 31, 2010, enclosing a bill for a delinquent debt in the amount of \$32,397.37 plus interest accruing from June 2010. The agency charged claimant for the costs of transporting his HHG to St. Louis, the PDS to which he did not physically relocate. The bill contained the following statement:

Remarks: BILL GENERATED TO RECOUP COST OF HHG SHIPMENT
DUE TO FAILURE TO REPORT FOR DUTY - CLM

The agency in its response to this Board alleges that this debt was generated because claimant breached his service agreement with the Government by failing to report for duty, thereby failing to serve the minimum required time of twelve months. This allegation is based upon an email message from the St. Louis District alleging the circumstances of claimant’s failure to report for duty. Claimant asserts that the agency has failed to properly characterize and consider the nature of his family emergency, that at the time of his resignation the reasons for his separation were beyond his control and acceptable to the agency, that he resigned the position at the urging of the agency so that they could recruit another person for the position, and that he could have reported at a later date if allowed to do so. Additionally, claimant states that but for the period of thirty days between his resignation and rehiring by the agency he has been a federal employee for fifteen years. He

¹ Claimant’s reply to the agency response contains the factual allegations of the family emergency.

notes that the email message upon which the agency response is based does not affirmatively state that he was in breach of the service agreement.

Discussion

Pursuant to statute, the Government may pay relocation expenses when an employee transfers from one duty station to another in the interest of the Government. 5 U.S.C. § 5724(a) (2006). Reimbursement for such relocation costs is conditioned upon an employee entering into an agreement to remain in government service for a period of not less than twelve months following the transfer. It further provides that if the employee violates the agreement, unless he is separated for reasons beyond his control that are acceptable to the agency, the money spent for such expenses “is recoverable from the employee as a debt due the United States.” 5 U.S.C. § 5724(i); 41 CFR 302-2.14 (2008); *see Arthur Hubbard*, CBCA 1932-RELO, 10-2 BCA ¶ 34,540; *Nancy C. Johnson*, GSBCA 16612-RELO, 05-1 BCA ¶ 32,931.

While claimant did not physically transfer to the new PDS, he began his service there with LWOP and ultimately resigned the position. He was then hired by the Louisville District of the agency a month later. Under such circumstances, once an employee has resigned from employment, subsequent federal employment does not fulfill the statutory or regulatory requirement of twelve months of government service because the required service must continue without a break in service. *See, e.g., Amy Oestreich*, GSBCA 16489-RELO, 05-1 BCA ¶ 32,852 (2004).

Even so, there is no automatic requirement under statute or regulation that the agency establish and collect a debt in the amount of relocation costs should an employee fail to complete twelve months of government service. The agency may exercise considerable discretion in deciding whether to release an employee from this obligation. *Melinda K. Kitchens*, GSBCA 16639-RELO, 05-2 BCA ¶ 33,062. It is within the agency’s discretion to determine whether, under the particular circumstances presented, claimant’s separation from service was voluntary or for a reason beyond claimant’s control and acceptable to the agency. We will not question the agency’s exercise of its discretion so long as it has a reasonable basis. *Arthur Hubbard; Jeanne Hehr*, GSBCA 16936-RELO, 06-2 BCA ¶ 33,431, at 165,741.

In this case, there is no evidence in the record that the agency has recognized its duty to exercise its discretion. There is no evidence that the agency has considered claimant’s allegations concerning his family emergency and actually made a determination as required by the statute, regulation, and service agreement as to whether the reasons that claimant failed to report for duty and subsequently resigned were beyond his control and whether

these reasons were acceptable or not acceptable to the agency. Rather, it appears that a bill of collection was issued which simply recites claimant's failure to report to duty without any underlying determination as to whether claimant's situation meets the exception stated in the statute, regulation, and service agreement. Under such circumstances, we cannot find that the bill of collection is justified by a valid exercise of the agency's discretion.

Decision

As the agency has failed to exercise its discretion, the bill of collection is not justified at this time. The agency is not precluded from exercising its discretion and making a determination as to whether claimant's situation justifies collection of the relocation costs at issue. If the agency makes a determination unfavorable to claimant, claimant may seek review at this Board.

ALLAN H. GOODMAN
Board Judge