



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

February 15, 2013

CBCA 3030-RELO

In the Matter of ROBERT SESSIONS, JR.

Robert Sessions, Jr., Ramstein Air Base, Germany, Claimant.

Christine L. Murray, Chief, Manpower & Personnel Flight, 86th Airlift Wing, United States Air Force Europe, APO Area Europe, appearing for Department of the Air Force.

DANIELS, Board Judge (Chairman).

Robert Sessions, Jr., was transferred by the Department of the Air Force to a position in Germany in July 2011. While working in that country, he was diagnosed by physicians as having a condition which required surgery. He requested an early release from his thirty-six month tour of duty, and reassignment to his previous post in the United States, so that the surgery could be performed at a place where his family could provide assistance during his convalescence. His command denied the request. Mr. Sessions has asked us to review the command's decision.

The command initially gave two reasons for its determination: Mr. Sessions had not fulfilled the commitment in his transportation agreement to remain at the post for at least twelve months, and the justification for the request did not meet the criteria stated in paragraph C5574-B.2 of the Joint Travel Regulations (JTR). As the command now acknowledges, the first of the reasons is not valid; Mr. Sessions had been at his post for fourteen months at the time he made the request. Thus, we consider solely whether the second reason is valid.

Paragraph C5574 of the JTR is entitled, "Acceptable Reasons for Release from a Tour of Duty." This paragraph provides that generally, "[a]n employee, serving under a service agreement at any [permanent duty station], may be released from the tour of duty requirement

specified in the agreement for reasons beyond the employee's control that are acceptable to the [Department of Defense] component." JTR C5574-A. Several examples of acceptable reasons for release from tour requirements are listed. Mr. Sessions maintains that two of the examples apply to his situation. One, which applies to all tours of duty, is "[i]llness not induced by misconduct." JTR C5574-B.1.a. The other, which applies to tours of duty outside the contiguous United States, is "[c]ompletion of the agreed tour of duty would result in extreme personal hardship because of circumstances beyond the employee's control, such as conditions seriously affecting the health, welfare, and safety of the employee, serious illness/death in the immediate family, imminent breakup of the family group." JTR C5574-B.2.b.

Mr. Sessions told his command that his physicians cautioned that his surgery would require a hospital stay of two to four days, and that he would be unable to speak for two weeks or longer after the surgery was performed. The command said that it understood that Mr. Sessions would need assistance during this period and that he might feel more comfortable having the surgery performed in the United States. Nevertheless, the command believed that Mr. Sessions could be expected to return to work after a period of convalescence. The command's representative explained:

We do not make these decisions lightly. On the contrary, we exercise extreme care and caution, in weighing the personal hardship of the individual against the possible costs for the employing agency, not only to fund Mr Sessions' [permanent change of station] back to the [United States], but also to recruit and bring his replacement overseas. In this case the personal hardship did not outweigh the potential cost in our analysis.

By stating that an employee may be released from a tour of duty requirement only "for reasons beyond the employee's control that are acceptable to the [Department of Defense] component," the JTR makes the release decision discretionary. When we review discretionary calls, we do not disturb the agency's judgment unless we find the determination to have been arbitrary, capricious, or clearly erroneous. *William F. Brooks, Jr.*, CBCA 2595-RELO, 12-2 BCA ¶ 35,064; *see also Christopher Sickler*, CBCA 1010-RELO, 08-1 BCA ¶ 33,825; *Melinda Slaughter*, CBCA 754-RELO, 07-2 BCA ¶ 33,633. We thus allow to stand agency decisions even where a contrary determination would also have been reasonable. *Larry E. Olinger*, GSBCA 14566-RELO, 98-2 BCA ¶ 29,877. In this case, the

agency gave careful thought to the matter, and we believe that in light of the facts as presented by the employee, the decision was not arbitrary, capricious, or an abuse of discretion. Consequently, we sustain the decision.

STEPHEN M. DANIELS
Board Judge