



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

October 18, 2013

CBCA 3424-RELO

In the Matter of WILLIAM G. STERLING

William G. Sterling, Cincinnati, OH, Claimant.

James E. Platske, Director, Southeast Region, Office of Air and Marine, Customs and Border Protection, Department of Homeland Security, Aguadilla, PR, appearing for Department of Homeland Security.

DANIELS, Board Judge (Chairman).

William G. Sterling, an air interdiction agent with the Department of Homeland Security's Customs and Border Protection (CBP), is stationed at Aguadilla, Puerto Rico. He asks the Board to review his agency's failure to reimburse him for various expenses he has incurred and will incur. The matters in question are expenses he and his family incurred in moving to Puerto Rico in 2008, expenses they incurred in traveling to and from the United States on vacations in 2011 and 2012, and expenses they will incur upon his impending separation from CBP and move back to the United States. Mr. Sterling also seeks reinstatement of or payment for annual leave he took for the 2011 and 2012 vacations in question; he believes that the trips qualify as renewal agreement travel.

Background

In early 2008, Mr. Sterling and his family were living in Indianapolis, Indiana. He responded to a CBP vacancy announcement which contained two statements of importance to this case. First, the announcement listed various duty locations where individuals selected for appointment might be assigned. Among these locations was Aguadilla, Puerto Rico. Second, the announcement advised that "[r]elocation expenses will not be paid."

Mr. Sterling was selected for appointment to what would be his first civilian federal position. He accepted the agency's offer, was assigned to Aguadilla, and reported there on May 12, 2008. CBP did not pay for any of the expenses he incurred in moving to this location.

After he arrived in Puerto Rico, at the agency's request, he completed a residency certification. Based on his responses, the agency considered him a "non-local hire" and therefore entitled to earn home leave. Because CBP considered Aguadilla to be Mr. Sterling's permanent duty station, however, the agency did not ask him to sign a service agreement committing him to remain there for a specific length of time.

In 2011 and 2012, Mr. Sterling requested and was denied home leave. He and his family took vacations in the United States, and he used annual leave for those vacations. CBP has since acknowledged that he is entitled to home leave and says that it is working to resolve questions as to his home leave balance. CBP has also stated that Mr. Sterling "may be entitled to travel related benefits for expenses associated with home leave under 5 USC § 5728."

During the time he has been stationed in Puerto Rico, Mr. Sterling was also serving as an officer in the United States Air Force Reserve. For nearly half of the time he was working for CBP in Puerto Rico, he was on leave from that agency while on military reserve duty.

In 2013, Mr. Sterling refused an unfunded, lateral transfer to a CBP position within the United States. Instead, he told CBP that he would separate from the agency and requested reimbursement for expenses of relocating back to the United States. The agency stated that it would not pay these expenses.

Discussion

Expenses of moving from Indianapolis to Puerto Rico

Under statute, agencies "may pay . . . travel expenses of a new appointee and transportation expenses of his immediate family and his household goods and personal effects from the place of actual residence at the time of appointment to the place of employment outside the continental United States." 5 U.S.C. § 5722(a)(1) (2006). The law specifies that agencies must, in implementing this authorization, follow regulations prescribed by the Administrator of General Services. *Id.* These regulations, known as the Federal Travel Regulation (FTR), state that an agency "may or may not pay" relocation benefits to a new appointee. 41 CFR 302-3.2 (2007). We have consequently held that

agencies have discretion to decide whether a new appointee being assigned to his first duty station will be reimbursed for relocation expenses. *Philip D. Hayes*, CBCA 3095-RELO, 13 BCA ¶ 35,257.

CBP clearly informed Mr. Sterling, through the vacancy announcement to which he responded, that it would not pay the expenses he might incur in relocating to his first assignment. The agency's position that it would not cover his expenses was permissible and appropriate in light of the announcement. *Wilberto M. Sanchez*, CBCA 3397-RELO, et al. (Sept. 10, 2013).

Expenses of vacation travel

According to CBP's Leave Handbook, an employee becomes eligible for home leave after having completed twenty-four months of service abroad. The agency now agrees that under this provision, Mr. Sterling was entitled to home leave. The agency professes difficulty in calculating the amount of such leave, however, noting that under 5 CFR 630.604(a)(6) (2012), an employee does not accrue home leave while on military duty, and Mr. Sterling was on such duty for a significant portion of the time he was assigned to his civilian position in Puerto Rico.

The extent to which Mr. Sterling has accrued home leave while in Puerto Rico is not a matter we may decide. The Board's authority to settle claims against the Government is limited to "claims involving expenses incurred by Federal civilian employees for official travel and transportation, and for relocation expenses incident to transfers of official duty station." 31 U.S.C. § 3702(a)(3) (2006). Claims involving civilian employees' leave are settled not by us, but rather, by the Director of the Office of Personnel Management. *Id.* § 3702(2); *Harvey W. Tharps*, CBCA 1717-RELO, 10-1 BCA ¶ 34,364; *Stanley J. Cieslewicz*, CBCA 1746-TRAV, 09-2 BCA ¶ 34,294; *Oscar G. Rivera*, GSBCA 16332-TRAV, 04-2 BCA ¶ 32,735. We consequently refer to the Office of Personnel Management the portion of the claim which concerns leave.

We may, however, resolve disputes about a related but distinct matter, renewal agreement travel. As the Comptroller General has held, reimbursement for the costs of such travel is not necessarily dependent on the granting of home leave. *Estelle C. Maldonado*, 62 Comp. Gen. 545 (1983).

Under statute, agencies –

shall pay . . . the expenses of round-trip travel of an employee, and the transportation of his immediate family, . . . from his post of duty outside the

continental United States, Alaska, and Hawaii to the place of his actual residence at the time of appointment or transfer to the post of duty, after he has satisfactorily completed an agreed period of service outside the continental United States, Alaska, and Hawaii and is returning to his actual place of residence to take leave before serving another tour of duty at the same or another post of duty outside the continental United States, Alaska, and Hawaii under a new written agreement made before departing from the post of duty.

5 U.S.C. § 5728(a).

According to CBP, renewal agreement travel was not available to Mr. Sterling because the benefit is only for employees who have completed “an agreed period of service,” and he could not have done so because Puerto Rico was his duty station permanently, not for a period of time. We have endorsed, however, the Comptroller General’s understanding that “an employee’s entitlement to renewal agreement travel is not defeated by the fact that he may have served in an overseas area without a written agreement, if he has served at such post for the period normally required of other employees of the agency serving in the same area.” *Rivera* (citing *Maldonado*); *George E. Lingle*, GSBICA 13946-TRAV, 97-2 BCA ¶ 29,292 (same); *see also Jorge J. Martinez*, CBCA 2265-RELO, 11-1 BCA ¶ 34,704. According to the agency’s Leave Handbook, once home leave is approved, renewal agreement travel for the employee and his immediate family will be authorized at government expense if the employee has agreed to return to work at the overseas duty station for the succeeding twelve months.

By the time Mr. Sterling took his vacation in 2012, if not sooner, he clearly qualified for tour renewal travel, having completed twenty-four months of service abroad and then returned to his duty station for at least twelve months. CBP shall pay the expenses he and his family incurred in traveling once to and from the United States, limited to the cost of round-trip travel to Indianapolis, his place of actual residence at the time of his appointment to federal service. As Mr. Sterling concedes, he should not have asked for reimbursement of renewal agreement travel in two consecutive years, since the agency’s standard practice is to require at least twenty-four months of service between government-paid trips home. Payment for the other vacation trip is inappropriate.

Expenses of moving from Puerto Rico back to the United States

The same statute which permits agencies to pay the travel and transportation expenses of a new appointee to his place of employment outside the continental United States also permits agencies to pay “these expenses on the return of an employee from his post of duty outside the continental United States to the place of his actual residence at the time of

assignment to duty outside the continental United States.” 5 U.S.C. § 5722(a)(2). As to this part of the statute, the FTR states the following under the heading “Relocation Separation -- Overseas to U.S. Return for Separation”:

Must my agency pay for return relocation expenses for my immediate family and me once I have completed my duty OCONUS [outside the continental United States]?

Yes, once you have completed your duty OCONUS as specified in your service agreement, your agency must pay one-way transportation expenses for you, for your family member(s), and for your household goods.

41 CFR 302-3.300 (2012). Unlike the regulation regarding payment of the expenses a new appointee incurs when moving to a first post of duty outside the continental United States, this provision is not permissive. It states that the expenses an employee incurs in moving back to the United States for separation must be paid by the Government.

We have already held that the absence of a service agreement will not defeat a claim for renewal agreement travel. We see no reason why it should defeat a claim for return relocation expenses, either, when an employee has served OCONUS at least the length of time generally held by the agency to constitute a tour of duty. An agency “policy of denying overseas employment rights to employees depending on whether an assignment is ‘rotational’ or ‘permanent’ . . . is unsupported.” *Maldonado*. CBP shall pay the reasonable costs of Mr. Sterling’s return travel and transportation to the United States, once he separates from government service, as he has said he will do.

STEPHEN M. DANIELS
Board Judge