



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

December 5, 2013

CBCA 3446-RELO

In the Matter of KENNETH EVANS

Kenneth Evans, Wildwood Crest, NJ, Claimant.

James E. Hicks, Office of Chief Counsel, Drug Enforcement Administration, Department of Justice, Springfield, VA, appearing for Department of Justice.

SHERIDAN, Board Judge.

Claimant, Kenneth Evans, a former employee of the Department of Justice, Drug Enforcement Administration (DEA or agency), received relocation benefits for a change of station move. As provided by statute and regulation, claimant signed a service agreement committing to remain in the employ of the Government for not less than twelve months after reporting to his new station. Claimant subsequently resigned his position after approximately nine months at the new station. The agency holds claimant liable for \$6044.28 for the relocation costs expended by the agency, reasonably declining to accept claimant's reasons for resigning as a basis to forego the debt. Claimant is liable for all costs expended by the agency for his relocation.

Background

Claimant was hired by the DEA as a diversion investigator. Upon completion of the basic instruction course, claimant was reassigned from his duty station in Tampa, Florida, to a new duty station in San Antonio, Texas. In order to receive relocation expenses, claimant signed a service agreement on March 20, 2011, in which he agreed to remain in the employ of the Government for not less than twelve months after reporting to San Antonio. The service agreement stated:

I agree that if I fail to fulfill the terms of this agreement by resigning, voluntarily retiring, vacating my position without authority, or if I am removed for cause (as distinguished from a reason beyond my control and acceptable to the Drug Enforcement Administration) before the end of the twelve-month period, I will repay the United States Government all costs the Drug Enforcement Administration has paid towards my relocation expenses.

Claimant reported to his new duty station in San Antonio on June 24, 2011.

On June 29, 2011, and November 2, 2011, the agency processed travel vouchers for claimant's en route travel in the amounts of \$351.02 and \$278.95, respectively. In November 2011, claimant's household goods were shipped from Bradenton, Florida, to San Antonio at a cost to the agency of \$5419.59.

Claimant resigned from the DEA effective March 24, 2012, after fulfilling only nine months of his service agreement.

On March 12, 2013, the DEA sent a demand letter to claimant, notifying him of his required reimbursement of a debt to the Government in the amount of \$6044.28. Claimant disputed the debt to the Civilian Board of Contract Appeals (CBCA).

Discussion

When a federal employee is transferred to a new official duty station on a permanent basis, the Federal Government authorizes the agency to pay "travel expenses (A) of a new appointee . . . from his place of residence at the time of selection or assignment to his duty station." 5 U.S.C. § 5723(a)(1) (2006). However, an agency may pay such travel and transportation expenses:

only after the individual selected or assigned agrees in writing to remain in the Government service for 12 months after his appointment or assignment, unless separated for reasons beyond his control which are acceptable to the agency concerned. If the individual violates the agreement, the money spent by the Government for the expenses is recoverable from the individual as a debt due the Government.

5 U.S.C. § 5723(b). This statute is implemented through the Federal Travel Regulation (FTR), which reiterates the requirement to sign a service agreement. 41 CFR 302-2.13 (2011). The regulation also notes the penalty for violation of the service agreement:

[I]f 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 statute, regulation, and service agreement itself made it abundantly clear to claimant that if he violated the terms of the service agreement by leaving government service before completing one year of post-move employment, the agency would be entitled to require him to repay the relocation expenses incurred by the Government. Claimant has not asserted that he was unaware of the requirements set forth in the service agreement and the consequences for their violation.

The only exception to required repayment of indebtedness for violating the service agreement is a reason beyond claimant's control and acceptable to the DEA. The CBCA has held that "the claimant has the burden of proof in a relocation case." *Randy C. Davidson*, CBCA 2044-RELO, 11-1 BCA ¶ 34,750, at 171,055. Our predecessor board in deciding these matters, the General Services Board of Contract Appeals, held that "unless an employee can show that his resignation was effectively forced by the agency without reasonable grounds, the resignation will be presumed to have been voluntary, and if it occurs within twelve months of a transfer, the agency may recover as a debt the expenses paid for the employee's relocation." *Kerry Flood*, GSBICA 16806-RELO, 06-1 BCA ¶ 33,279, at 164,999.

In his appeal to the CBCA, claimant posits: "The actions of the DEA group supervisor intensified and were directly related to my resignation, these actions were beyond my control." The actions to which claimant refers appear to relate to some perceived difficulties with his group supervisor and an incident that occurred in October 2011, approximately five months prior to claimant's resignation. In other correspondence, claimant explains that:

The reasons for my resignation were twofold. The first was due to personal issues involving my marriage The second reason for my resignation stemmed from my involvement in a criminal case . . . [that], in my opinion, put my life, as well as my co-workers' lives in jeopardy, all due to the careless management of the case by my group supervisor.

The sum of these issues, my marital problems and a lack of faith in my group supervisor, made the choice to resign and follow my wife to New Jersey the only viable option for me at the time.

Claimant also writes:

My resignation from the DEA in March 2012 was initially based on what I thought were insurmountable personal reasons at the time. However, after leaving the DEA and looking back I realized that the intensity of my issues may have been brought about by the actions of my group supervisor I believe that if not for [the October 2011] incident, my thinking would have been clearer and my thought process better, allowing me to overcome my personal issues and I would still be employed as a diversion investigator with the DEA.

Focusing on claimant's statement that he resigned based on what he thought were "insurmountable personal reasons at the time," the DEA rejected claimant's assertions that his resignation was for reasons beyond his control and pursued the debt.

This Board has recognized that "[i]t 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." *Paula A. Shimata*, CBCA 1135-RELO, 08-2 BCA ¶ 33,901, at 167,775; *see also Erik E. Ehrenborg*, CBCA 1678-RELO, 10-1 BCA ¶ 34,370. We will not question the agency's exercise of its discretion so long as it has a reasonable basis. *Carlos N. Lacy*, CBCA 1059-RELO, 08-2 BCA ¶ 33,887. Accordingly, our inquiry is limited to whether the agency reasonably exercised its discretion.

The record shows that at the time he resigned, claimant attributed his resignation to personal reasons. There is no indication that, at the time he resigned, claimant raised workplace issues as prompting his resignation. It was not until well after the resignation, that claimant began to speculate that work issues involving his group supervisor may have exacerbated his personal issues and potentially affected his decision to resign.

We do not see where either of the reasons claimant proffers would necessarily be beyond his control, much less acceptable to the DEA. The marital problems claimant was experiencing and his personal beliefs concerning the work environment do not compellingly demonstrate that the resignation was beyond his control or make unreasonable, much less arbitrary or capricious, the agency's decision deeming the reasons unacceptable. *Amy Oestreich*, GSBCA 16489-RELO, 05-1 BCA ¶ 32,852 (2004); *Jose Cabrera, Jr.*, GSBCA 15332-RELO, 01-1 BCA ¶ 31,212 (2000); *John A. Bukowski*, GSBCA 14724-RELO, 99-1 BCA ¶ 30,200 (1998). The claimant has not satisfied his burden to obtain relief.

Decision

The claim is denied.

PATRICIA J. SHERIDAN
Board Judge