



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

January 23, 2014

CBCA 3520-RELO

In the Matter of CHRISTOPHER G. COVER

Christopher G. Cover, Aguadilla, PR, Claimant.

Johnny Morales, Director, Air Operations, Caribbean Air and Marine Branch, Customs and Border Protection, Department of Homeland Security, Aguadilla, PR, appearing for Department of Homeland Security.

KULLBERG, Board Judge.

Claimant, Christopher G. Cover, seeks payment for the costs of his relocation to and from his duty station in Puerto Rico and compensation for home leave. As discussed below, the Board finds that Mr. Cover is not entitled to reimbursement for his relocation costs from his former residence to his current duty station. Secondly, the Board finds that it would be premature to make any determination as to whether Mr. Cover can be reimbursed for the costs of relocation back to the continental United States (CONUS) because he has not been selected for a position at a CONUS duty station. Finally, the Board does not have authority to decide Mr. Cover's claim for denied home leave.

Background

Mr. Cover applied for and was offered a position as an air interdiction agent with Customs and Border Protection (CBP), an agency within the Department of Homeland Security. As a newly hired federal civilian employee, he was assigned to CBP's facility in Aguadilla, Puerto Rico. CBP's vacancy announcement stated that relocation expenses would not be paid by the Government. Mr. Cover resided in Corpus Christi, Texas, when he was

notified of his appointment, and he relocated to Puerto Rico at his own expense. He began work on September 4, 2007, and continues to work at the same duty station.

After having served almost five years at his duty station in Puerto Rico, Mr. Cover requested, on July 3, 2012, that he be reassigned to a CBP facility in CONUS. CBP subsequently advised him in a letter dated October 22, 2013, that hiring had been “paused” and that his request for a transfer had been disapproved. In several subsequent letters to CBP, Mr. Cover expressed concerns about home leave and relocation expenses. By letter dated May 10, 2013, CBP’s assistant chief counsel advised Mr. Cover that he was not entitled to relocation expenses for his move in 2007 from his residence in Corpus Christi, Texas. He was also advised that efforts were being made to validate his home leave balance. In his request for the Board’s review of this matter, Mr. Cover sought the Board’s ruling with regard to the following: (1) payment by CBP for the costs of his relocation from his residence in Corpus Christi, Texas, to his current duty station in Puerto Rico; (2) payment for relocation costs when he is transferred to a CONUS duty station; and (3) compensation for home leave that he asserts was denied.¹

Discussion

As a newly-appointed federal employee, Mr. Cover is only entitled to be paid the costs of relocating from his former residence in Texas to his current duty station in Puerto Rico if CBP agrees to do so. Statute provides, in relevant part, the following:

- (a) Under regulations prescribed under section 5738 of this title . . . an agency may pay from its appropriations—
 - (1) 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 of the continental United States.

5 U.S.C. § 5722(a) (2006). The Federal Travel Regulation (FTR) states that an agency “may or may not” pay a newly appointed employee the cost of relocation to a duty station either

¹ Mr. Cover’s submission to the Board only provided an estimate of costs for each of his claims. His estimated costs were \$70,000 for relocation to Puerto Rico and \$70,000 for his relocation back to CONUS. His estimated cost for denied home leave was \$30,000.

within or outside of the continental United States (OCONUS). 41 CFR 302-3.2 (2007). An agency, therefore, has the discretion not to pay the cost of relocating a newly appointed federal civilian employee from CONUS to an OCONUS duty station. *See William G. Sterling*, CBCA 3424-RELO, 13 BCA ¶ 35,438, at 173,810; *Wilberto M. Sanchez*, CBCA 3397-RELO, et al., 13 BCA ¶ 35,409, at 173,702. CBP's vacancy announcement for air interdiction agents advised potential applicants that the costs of relocation would not be paid. It was, therefore, within CBP's discretion not to pay Mr. Cover for his costs of relocation from his former residence in Texas to his duty station in Puerto Rico.

Mr. Cover seeks a ruling from the Board as to whether the Government will pay for his costs of transferring to a new duty station in CONUS, but he has not obtained such a transfer. In order for this Board to decide a claim for relocation costs, an employee must first submit a claim for incurred costs to his or her agency for adjudication. *Charles Wright*, CBCA 3484-RELO, 13 BCA ¶ 35,432, at 173,792 (citing 31 U.S.C. § 3702; 48 CFR 6104.401 (2012)). Although Mr. Cover has sought to relocate from his current position with CBP, he continues to work in his current position, and it would be premature for the Board to make any ruling as to whether Mr. Cover is entitled to be paid for relocating from Puerto Rico.

This Board does not have the authority to resolve Mr. Cover's claim for denied home leave. Under statute, an employee is entitled to be paid "the expenses of round-trip travel . . . 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." 5 U.S.C. § 5728(a). A claim for such accrued home leave is not a matter that can be decided by this Board; rather, it is to be decided by the Director of the Office of Personnel Management (OPM). *See Sterling*, 13 BCA at 173,810 (citing 31 U.S.C. § 3702(a)(2)-(3)). Whether Mr. Cover has a valid claim for a certain number of days of home leave, therefore, is a matter that will have to be properly submitted to OPM for review.

Decision

Mr. Cover's claim for the cost of relocating from his previous residence to his current duty station is denied. The Board makes no determination with regard to his claims for a possible relocation back to CONUS and his claim for denied home leave.

H. CHUCK KULLBERG
Board Judge