



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

October 1, 2014

CBCA 3737-RELO

In the Matter of ROBERT E. SANDERS

Robert E. Sanders, Biloxi, MS, Claimant.

Thelma J. Strong, Chief Financial Officer, Forest Service, Department of Agriculture, Washington, DC, appearing for Department of Agriculture.

SULLIVAN, Board Judge.

Claimant, Robert E. Sanders, challenges the denial of his request that the Department of Agriculture, Forest Service, waive its demand for the repayment of relocation expenses paid by the Forest Service to Mr. Sanders related to his transfer from Harpers Ferry, West Virginia, to Frenchburg, Kentucky. We grant Mr. Sanders' claim in part and deny it in part. The agency is permitted to seek reimbursement of relocation expenses from Mr. Sanders because Mr. Sanders did not fulfill the requirements of his service agreement. However, the amount the agency is seeking must be reduced to remove amounts that do not appear to have been incurred in connection with the service agreement at issue.

Background

On June 8, 2010, Mr. Sanders signed a request for transfer of station authorization for his transfer from Harpers Ferry, West Virginia, to Frenchburg, Kentucky. Mr. Sanders agreed, pursuant to the terms of this request, to remain in the service of the Federal Government for twelve months following the effective date of the transfer unless he was "separated for reasons beyond his control and acceptable to the Government." Mr. Sanders further agreed that, if he did not fulfill this commitment, "any moneys expended by the United States on account of my move" would be recoverable from him as a debt due to the United States.

The June 8, 2010, agreement was the second service agreement that Mr. Sanders signed with the Forest Service in 2010. On February 23, 2010, Mr. Sanders signed a service agreement prior to his transfer from Anchorage, Alaska, to Harpers Ferry, West Virginia.

Mr. Sanders reported for duty in Frenchburg on June 21, 2010. He resigned from his position as a training instructor for the Forest Service on February 15, 2011. At the time he resigned, Mr. Sanders still was obligated to serve twenty-two days on his February 2010 service agreement and approximately four months on his June 2010 service agreement. Mr. Sanders explained in his initial letter to the Board that he resigned to take care of his mother after the Forest Service denied his request for leave without pay. Mr. Sanders thereafter took a position with the United States Air Force in Biloxi, Mississippi, in April 2012.

Neither party has provided to the Board the Forest Service's original demand for reimbursement of amounts paid for Mr. Sanders' relocation to Frenchburg, Kentucky. However, by letter dated August 15, 2013, the Forest Service denied Mr. Sanders' request for waiver of the requested reimbursement. The agency noted in its denial of Mr. Sanders' waiver request that he had resigned for "family-related reasons." The agency issued a bill for collection in the amount of \$9700.83 on December 31, 2013.

In response to an order from the Board, the agency identified and provided supporting documentation for the expenses that it paid for Mr. Sanders' relocation in the following amounts:

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|--|------------|
| Househunting Trip | \$ 825.03 |
| En route Travel to New Duty Station and Miscellaneous Expense Allowance | 579.20 |
| Temporary Quarters | 2,610.00 |
| Household Goods Transportation/Storage | 4,374.92 |
| Withholding Tax Allowance | 1,311.68 |
| Total Relocation Allowances Paid | \$9,700.83 |

As addressed below, the supporting documentation for the transportation of household goods appears to show that those costs were incurred in 2012 to ship goods to Biloxi, Mississippi, rather than in 2010 to ship goods to Frenchburg, Kentucky. The Forest Service

has provided no explanation as to why Mr. Sanders is required to repay these costs as a result of the violation of his service agreement for his transfer to Frenchburg, Kentucky.

Discussion

The Government pays relocation expenses when an employee transfers from one duty station to another in the interest of the Government. 5 U.S.C. § 5724 (2006). To obtain reimbursement of relocation expenses, an employee must sign a service agreement and agree to remain employed by the Federal Government for at least twelve months following the effective date of the transfer. 5 U.S.C. § 5724(i); 41 CFR 302-2.13 (2009). If the employee does not fulfill the terms of this agreement, the employee must reimburse all costs that have been paid by the agency towards the relocation expenses. 41 CFR 302-2.14 (“if 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.”). “The determination whether or not to release an employee from [a] service agreement is a matter of agency discretion” *Carlos N. Lacy*, CBCA 1059-RELO, 08-2 BCA ¶ 33,887, at 167,715. The Board will not overturn the agency’s denial of a waiver request unless there is no reasonable basis for it. *Id.*

The agency’s denial of Mr. Sanders’ request to waive the requirement to reimburse relocation expenses was not arbitrary or capricious. Mr. Sanders did not fulfill the requirement to remain a federal government employee for twelve months after the effective date of his transfer request. Instead, he chose to resign in February 2011, with four months to serve on the second service agreement, to take care of his mother. While Mr. Sanders explains that he thought he had no choice but to resign after the agency denied his request for leave without pay, Mr. Sanders’ resignation was not beyond his control. *David S. Garber*, CBCA 2400-RELO, 11-2 BCA ¶ 34,831 (resignation because of health conditions of parents not beyond claimant’s control). Moreover, although Mr. Sanders also did not fulfill the twelve-month commitment in his February 2010 service agreement, the agency did not seek reimbursement of the \$13,318.36 in expenses that it paid to relocate Mr. Sanders to West Virginia pursuant to that agreement.

Mr. Sanders explained to the Board that he believed that the one-year commitment ran from the February 2010 agreement and that he received credit for the time he had already worked (February to June). Mr. Sanders’ understanding is incorrect. When an employee enters into more than one service agreement, the employee must fulfill the requirements of each agreement for the period of time specified in each agreement. 48 CFR 302.2-19 (“[S]ervice agreements cannot be grouped together and must be adhered to separately. Each agreement is in effect for the period specified in the agreement.”) Mr. Sanders’ contrary

understanding cannot contravene this requirement. *See Pamela Stump*, CBCA 787-RELO, 08-1 BCA ¶ 33,789.

Mr. Sanders' subsequent employment with the Air Force also does not eliminate the requirement to reimburse the agency pursuant to the terms of the June 8, 2010, agreement. *Carlos N. Lacy*, 08-2 BCA at 167,715. It is undisputed that there was a break in federal service and Mr. Sanders did not remain in federal service for twelve months following the date of his transfer in June 2010. The regulation requires that the employee continue in Federal service for an uninterrupted twelve-month period. 41 CFR 302.2-13; *Amy Oestreich*, GSBCA 16489-RELO, 05-1 BCA ¶ 32,852 (2004).

Mr. Sanders explained in his reply to the agency's response that he believes that he should not be required to reimburse the agency because the agency did not move his household goods to Frenchburg, Kentucky. Instead, Mr. Sanders asserts, his household goods were moved from Waynesboro, Pennsylvania, to Biloxi, Mississippi, when Mr. Sanders became employed by the Air Force. The agency submitted documents that support Mr. Sanders' explanation. Specifically, the agency provided to the Board an invoice from a firm, Relocation Management Worldwide, dated July 10, 2012, for the transfer of household goods from Waynesboro, Pennsylvania, to Biloxi, Mississippi, in June 2012 (load date - June 14, 2012, delivery date - June 19, 2012). The amount of this invoice is \$4374.92, which is the amount of the cost for household goods transportation and storage that the agency seeks to recover from Mr. Sanders. Because the service agreement at issue concerns Mr. Sanders' transfer to Frenchburg, Kentucky, in June 2010, it appears that these costs were incorrectly included in the agency's claim for reimbursement. The supporting documentation for the other costs shows that the remaining expenses were incurred in 2010 in connection with Mr. Sanders' transfer to Frenchburg, Kentucky, and are properly included in the agency's claim for reimbursement.

Decision

Because Mr. Sanders did not fulfill his commitment to remain employed by the Federal Government for one year following the June 2010 transfer request to Frenchburg, Kentucky, he must repay the amounts expended by the agency on his behalf in connection

with that transfer. However, as detailed above, it appears that \$4374.92 of the agency's claim is not for costs incurred in connection with that transfer. Accordingly, the Board reduces the amount Mr. Sanders is to repay the agency to \$5325.91.

MARIAN E. SULLIVAN
Board Judge