



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

June 24, 2014

CBCA 3804-RELO

In the Matter of GERALD L. JORDAN

Gerald L. Jordan, Warner Robins, GA, Claimant.

Crystal L. Moore, Chief, Financial Analysis Division, Air Force Personnel Center, Department of the Air Force, Randolph Air Force Base, TX, appearing for Department of the Air Force.

WALTERS, Board Judge.

This matter involves an agency demand for repayment of relocation costs incurred in connection with a transfer of position that the claimant initially accepted but ultimately decided against, because of perceived economic hardship. For the reasons explained below, we find claimant liable to the agency for such costs.

Background

Claimant, Gerald L. Jordan, a civilian employee with the Department of the Air Force at the Warner Robins Air Force Base, Georgia, in July 2012 was offered a transfer to Scott Air Force Base, Illinois, for a “career broadening” position. He accepted that offer and, on July 27, 2012, executed a career broadening memorandum of agreement and a transportation agreement, under which he was authorized relocation entitlements in connection with his transfer, in exchange for his promise to remain with the Government after transfer for at least twelve months. Among such entitlements, Mr. Jordan was able to participate in the Department of Defense National Relocation Program (DNRP) and entered the DNRP on August 13, 2012, to sell his residence in Warner Robins, Georgia, through the DNRP Guaranteed Homesale Service (GHS).

The DNRP office on September 7, 2012, provided Mr. Jordan with an offer to purchase his residence. Because the offer for his home was some \$25,000 below what Mr. Jordan indicates would have been needed to clear his mortgage on the property, he decided to reject the offer and to withdraw from the DNRP. He also notified the agency that he would have to retract his earlier decision to accept the transfer to Scott Air Force Base. The agency, on September 12, 2012, advised Mr. Jordan that he would be responsible for repaying an estimated \$2515 in relocation costs incurred on his behalf. He was told that estimate might be increased, because the agency had yet to be billed for actual charges, and that he would be notified by letter of the total amount due. Claimant agreed to repay that amount, since it was obviously far less than the \$25,000 deficit that would have been produced were he to accept the DNRP offer.

On December 13, 2012, the agency sent claimant a letter asserting a total debt due it of \$5489.30, consisting of the following items of cost it had incurred on claimant's behalf in conjunction with the DNRP:

Title Search	\$ 630.50
Termite Inspection	145.00
Radon Inspection	240.00
First Appraisal	600.00
Second Appraisal	650.00
Septic Inspection	850.00
GAF Administrative Fee	<u>2373.80</u>
Total	<u>\$ 5489.30</u>

Mr. Jordan was surprised by this total (since it was more than double the \$2515 figure mentioned earlier) and, in particular, sought further information about the "GAF Administrative Fee." He also inquired as to how he might pursue relief from liability, i.e., a waiver of the debt. There was some confusion about the proper office to which a waiver request should be addressed, but eventually, the same office that had notified him of the debt, the Financial Analysis Division of the Air Force Personnel Center, Randolph Air Force Base, Texas, issued a ruling by memorandum ("SUBJECT: Relief of Liability Determination for Mr. Gerald Jordan") denying the waiver request. That ruling, however, seems to confuse liability and waiver. Rather than focusing on and evaluating the equities that might favor forgiveness of the debt and waiver of liability in this instance, it dwelt instead on prior case precedent and support for the agency's determination that Mr. Jordan is legally liable for repayment of relocation costs. The ruling also states that this Board would have authority to review the agency's waiver decision:

Both the General Services Administration . . . Board of Contract Appeals . . . and the General Accounting Office (GAO) . . . have upheld that agencies may recoup money paid on the employee's behalf when an employee leaves government service or does not relocate as planned, unless for reasons considered in the government's interest or for reasons beyond the employee's control as accepted by the agency [citations omitted] Although we are very sympathetic to the financial implications regarding the offer received from the DNRP office, it is the agency's determination that the reasons provided for declining the offer were within the employee's control and deemed personal in nature. . . . Should you disagree with these findings, you may file an official appeal with the Civilian Board of Contract Appeals (CBCA)

Following the agency's suggestion, claimant sought review from this Board.

Discussion

Although it points to no express agreement undertaken by claimant that he would reimburse the Government for its costs in the event he decided not to proceed with the transfer of duty station, the agency correctly observes that case precedent both in our predecessor, the General Services Board of Contract Appeals (GSBCA), and before the General Accounting Office (GAO) (currently the Government Accountability Office), supports its finding of liability for such reimbursement in this case. *Thomas W. Burt*, GSBCA 14537-RELO, 98-2 BCA ¶ 29,751; 63 Comp. Gen. 187 (1984); *Richard J. Hughes*, B-197816 (June 24, 1981). In particular, in its decision in *Thomas M. Stan*, GSBCA 16679-RELO, 05-2 BCA ¶ 33,063, the GSBCA specifically held that “[a]n agency which incurs relocation expenses on behalf of an employee who accepts a transfer, but does not complete it as planned, may recover the expenses from the employee, unless the employee declined the transfer for a reason which the agency reasonably determines was beyond his control.” *Stan*, 05-2 BCA at 163,879; *accord Kennon Tuck*, CBCA 2651-RELO, 12-2 BCA ¶ 35,070.

As with the employee in *Stan*, we find the reasons for claimant's declining his transfer primarily to have been personal in nature and not beyond his control. Indeed, it seems that Mr. Jordan might have contacted a local real estate agent in Warner Robins, Georgia, prior to entering into the DNRP, in order to get some idea as to what his residence might bring on the current market and whether a mortgage deficit could be produced by a sale of the residence. The DNRP expenditures thus may have been averted. He indicates that he did consult with a local real estate agent later when considering whether to seek reconsideration and revision of the DNRP offer. Though alluding to a lack of time before being required to report to his new duty station, Mr. Jordan fails to explain adequately why he did not to try

to sell the property on his own after receiving the disappointingly low DNRP offer, especially since he states that the more recent sale of the property adjacent to his would have increased the market value of his own property, such that the \$25,000 deficit would have been eliminated.

Mr. Jordan argues that the *Stan* decision should not control here, because the applicable travel regulations in effect in this case differ from the legal authorities considered by the board in *Stan*. More specifically, the board in *Stan* noted that “[n]either statute nor regulation addresses these circumstances,” i.e., where an agency “provides relocation benefits to or on behalf of an employee it expects to transfer, but the employee does not relocate.” *Stan*, 05-2 BCA at 163,880.¹ In contrast to *Stan*, where there were no regulations in effect that dealt with such circumstances, Mr. Jordan points to the Joint Travel Regulations (JTR), which govern travel and relocation benefits of civilian employees of military departments such as himself, and to the following JTR provision that was in effect in 2012 when he retracted his acceptance of the transfer of permanent duty station (PDS):

C5582 RESPONSIBILITIES

A. Employee. An employee:

1. Is responsible for reporting to the designated PDS.
2. Who:
 - a. Does not arrive at the new PDS, or
 - b. Upon arrival at the new PDS refuses to perform the mission,
or
 - c. Resigns

is financially liable to reimburse the GOV'T for the PDT [permanent duty travel] allowances paid by the GOV'T, and

¹ As was true in *Stan*, since a service agreement concerns the situation in which an employee actually goes ahead with a transfer but then leaves government service within twelve months of the transfer, the existence of a service agreement (such as the one Mr. Jordan executed) would not be “relevant to a resolution of this case.” *Stan*, 05-2 BCA at 163,880.

3. May be indebted to the GOV'T for travel and transportation expenses under other circumstances in this Part.

JTR C5582. Mr. Jordan posits that, because this regulatory provision purports to deal solely with an employee's liability for travel and transportation costs, neither of which were incurred here, the agency's claim for repayment of other relocation-related expenditures it incurred on his behalf should be rejected; the regulation, he maintains, limits the agency's rights to a refund of travel and transportation costs and excludes the right to recover any other relocation costs.² The Board in *Stan*, however, made clear that the Government's entitlement to recoup relocation expenses incurred on an employee's behalf where he initially accepts and then decides against a PDS transfer is all-inclusive, as a matter of law, regardless of what regulation may or may not be in effect at the time with regard to particular elements of cost:

The *Burt* decision and the General Accounting Office decisions cited in it applied a Federal Travel Regulation (FTR) provision which contained the same rule and was restricted to househunting expenses. See 41 CFR 302-4.3(a) (1996). This provision was deleted from the FTR without explanation in 1997, when the part of the regulation concerning househunting trips was rewritten into a question-and-answer format. 62 Fed. Reg. 13,768 (Mar. 21, 1997). We believe that the rule we follow here remains a faithful interpretation of the statutes governing relocation benefits, that the FTR provision in question merely enunciated that rule with regard to one class of benefits, and that the deletion of the provision did not effect a change in the law.

Stan, 05-2 BCA at 163,881 n.1.

In *Stan*, it should be noted, the board found the employee liable only for certain of the cost items claimed, because other costs were not adequately documented by the agency as having "anything to do with services relevant to sale of the *Stan* residence." 05-2 BCA at 163,881. Unlike *Stan*, the agency here has provided our Board with complete documentation as to all of the items of relocation expenditures in question, including the so-called "GAF Administrative Fee," and we are satisfied that these expenditures were for services relevant to the prospective sale of Mr. Jordan's residence. Accordingly, based on the principles

² Mr. Jordan seems to be invoking the legal maxim "inclusio unius est exclusio alterius," the inclusion of one is the exclusion of another.

enunciated in *Stan*, we find claimant liable for repayment of all the costs sought by the agency.

By the same token, this finding of liability does not eliminate the possibility of the agency waiving or reducing that liability. The agency, which expressed sympathy for Mr. Jordan's situation, may well have been under the wrong impression in this regard. This could account for the manner in which it treated claimant's waiver request. In any event, a decision to waive collection of a debt is a matter within the agency's discretion and something to be made in accordance with the agency's own regulations. *Stan*, 05-2 BCA at 163,881 (and cases cited therein). Waiver of a debt, contrary to the agency's suggestion here, is not something this Board has authority to determine or jurisdiction to review. *Sydney C. Kaus*, CBCA 3744-RELO (May 6, 2014).

Decision

For the foregoing reasons, we hold that claimant is liable to repay the \$5489.30. The agency, however, is not precluded from reconsidering claimant's waiver request and has discretion to waive claimant's liability for all or a portion of that amount.

RICHARD C. WALTERS
Board Judge