



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

April 14, 2015

CBCA 4188-TRAV

In the Matter of RUSSELL S. CHILES

Russell S. Chiles, Flower Mound, TX, Claimant.

Sheila Melton, Director, Travel Functional Area, Enterprise Solutions and Standards, Defense Finance and Accounting Service, Indianapolis, IN, appearing for the Department of Defense.

LESTER, Board Judge.

Claimant, Russell S. Chiles, seeks reimbursement of \$2343.92 for Renewal Agreement Travel (RAT) that he took between November 15 and December 1, 2013. The Defense Finance and Accounting Service (DFAS) Travel Pay Office denied his request for reimbursement because, before he took RAT, he did not sign the appropriate service, or transportation, agreement committing to work at his post of duty outside the continental United States (OCONUS) for an additional twenty-four months. For the reasons explained below, we grant Mr. Chiles' reimbursement claim.

Background

Mr. Chiles was serving in an OCONUS post with the Defense Contract Audit Agency (DCAA) in Wiesbaden, Germany, to which he had transferred from a post within the continental United States (CONUS), when, on July 3, 2012, he requested a twenty-four-month extension of that overseas tour – an extension that would run from February 10, 2013, to February 21, 2015. As part of his application for extension of overseas service, he also requested reemployment leave. The DCAA approved both of those requests on August 27, 2012.

On September 11, 2013, the DCAA issued order number 2191-2014-RAAT-709X on DD Form 1614, authorizing RAT for Mr. Chiles from Wiesbaden to Dallas, Texas. In Block 21 of that order, the agency indicated that Mr. Chiles had signed a transportation agreement on August 4, 2013. Mr. Chiles then conducted his RAT from November 15 through December 1, 2013, based upon the RAT order.

On December 16, 2013, Mr. Chiles submitted a travel voucher seeking reimbursement of \$2343.92 for his RAT. Subsequently, the DFAS Travel Pay Office in Rome, New York, determined that the transportation agreement which Mr. Chiles had signed on August 4, 2013, was a DD Form 1618, which is for a twelve-month CONUS tour.¹ Because he was stationed in Germany, he was supposed to have signed a transportation agreement on DD Form 1617 for a twenty-four-month OCONUS tour. Because Mr. Chiles had not signed the appropriate transportation agreement, the DFAS Travel Pay Office rejected Mr. Chiles' RAT claim.

On January 2, 2014, Mr. Chiles executed a new transportation agreement on DD Form 1617 for a twenty-four-month OCONUS tour, to end February 21, 2015. His Acting Branch Manager at the DCAA also executed new RAT travel orders, with an approval retroactively dated to October 24, 2013, authorizing Mr. Chiles' RAT from November 15 through December 1, 2013. In Block 21 of the new orders, the Acting Branch Manager indicated that Mr. Chiles had signed a transportation agreement on January 2, 2014.

Mr. Chiles resubmitted his travel voucher under the new orders. By e-mail message dated January 13, 2014, the DFAS Travel Pay Office informed Mr. Chiles that his claim was denied. In that message, DFAS represented that, pursuant to Joint Travel Regulation (JTR) C5503-B2, Mr. Chiles was required, "[p]rior to departure from [his] OCONUS [Permanent Duty Station (PDS)]," to have "[e]ntered into a new written service agreement for another tour of duty at an OCONUS PDS." DFAS indicated that, because Mr. Chiles did not sign his transportation agreement until after he had completed his travel, DFAS would not pay his RAT claim.

By letter to the DFAS Travel Pay Office dated May 27, 2014, Mr. Chiles challenged the denial of his RAT claim, asserting that any failure on his part to sign an appropriate

¹ Mr. Chiles has asserted that he never signed a transportation agreement before he took his RAT. The agency, however, has included in the record a DD Form 1618 CONUS transportation agreement, dated August 4, 2013, containing Mr. Chiles' signature. In light of our disposition of the case below, it is irrelevant whether Mr. Chiles actually signed that transportation agreement.

transportation agreement before his RAT was an “administrative error,” that he “was unaware of the requirement to sign a new DD Form 1617 prior to taking RAT,” and that he signed one on January 2, 2014, as soon as he was made aware of the requirement. Attached to his letter was a memorandum from the Deputy Regional Director of DCAA’s Northeastern Region, which indicated that Mr. Chiles’ failure to sign the appropriate transportation agreement before his RAT was “a result of administrative error and through no fault of his own.” The Deputy Regional Director also indicated that Mr. Chiles plainly understood before his RAT “that he would be required to satisfactorily complete the period of agreed upon and approved extension . . . to 21 February 2015,” and he asked that DFAS “strongly reconsider denial of Mr. Chiles’ travel claim” because “[w]e do not believe Mr. Chiles should be penalized for not signing a transportation agreement when an administrative error occurred through no fault of his own.”²

Decision

“Federal civilian employees who are transferred to posts of duty outside the continental United States are generally eligible for a benefit commonly referred to as renewal agreement travel when they complete a set term of service and agree to continue to work at the overseas post.” *Oscar G. Rivera*, GSBICA 16332-TRAV, 04-2 BCA ¶ 32,735, at 161,911. “The purpose of RAT is to allow an employee who is stationed outside the continental United States to return to the United States between tours of duty overseas.” *Darryl J. Steffan*, CBCA 3821-TRAV, 14-1 BCA ¶ 35,734, at 174,904.

The statutory requirements for RAT are identified in 5 U.S.C. § 5728(a) (2012) and include the necessity of the agency employee having executed a new written agreement for his new OCONUS tour of duty “before departing from the post of duty” for RAT. The Department of Defense’s Joint Travel Regulations are intended to implement those statutory requirements and to effectuate the statute’s purpose. *Steffan*, 04-2 BCA at 161,911. Consistent with the statute, the JTR contains a requirement that, to be eligible for RAT reimbursement, the employee, prior to departure on RAT, must enter into a new written service agreement for another tour of duty at his OCONUS PDS:

² On May 29, 2014, the Supervisory Auditor for the DCAA European Branch Office also wrote to the DFAS Travel Pay Office, similarly indicating that Mr. Chiles had signed all required approvals of which he was aware before his RAT, that he had made clear his intent to fulfill his twenty-four-month service obligation, and that the initial failure to have Mr. Chiles sign the appropriate transportation agreement was “based on administrative error.”

Prior to departure from the OCONUS PDS an employee must have:

- a. Satisfactorily completed the prescribed tour of duty (par. C5570-C and APP Q3 for prescribed tours of duty), and
- b. Entered into a new written service agreement for another tour of duty at an OCONUS PDS; (the new service agreement covers costs incident to travel to the employee's actual residence or alternate location [in accordance with] pars. C7010-N1, C7010-N2, and C7010-N3 and return and any additional cost paid by the GOV'T as a result of the employee's transfer to another OCONUS PDS at the time of the tour RAT).

JTR C7010-B2.

“Although the statute contemplates execution of new written agreements ‘before departing from the post of duty,’ where the Government fails to offer a new agreement or refuses to negotiate one with the employee, this will not defeat his entitlement to such travel reimbursement.” *Jorge J. Martinez*, CBCA 2265-RELO, 11-1 BCA ¶ 34,704, at 170,899. “RAT reimbursement is not merely a matter of privilege” that an agency has discretion to grant or withhold, “but rather a mandatory requirement.” *Id.* (citing *Estelle C. Maldonado*, 62 Comp. Gen. 545 (1983)). The need for the employee to agree in writing that he is committing to a new twenty-four-month OCONUS tour of duty is for the Government's protection – that is, to ensure that the Government does not pay RAT expenses for an employee who has not committed to fulfilling, and does not necessarily intend to fulfill, service obligations for the time period required by statute. B-147722 (Jan. 9, 1962); B-130258 (Feb. 14, 1957). Even if, through administrative error or otherwise, a written agreement was inadvertently not signed before RAT was taken, the purposes of the statute are satisfied (and the employee is entitled, as a matter of right, to reimbursement for RAT expenses) if it was clear prior to that travel that the employee intended fully to perform the new tour of duty and corrected any administrative error by executing such an agreement after his return from RAT. B-130258 (Feb. 14, 1957).³

In *Richard W. Groff*, B-186213 (Aug. 3, 1976), the Comptroller General considered a situation that is remarkably similar to the one at issue here. In *Groff*, the claimant had

³ Conversely, if the employee “is fully aware of the requirement for a written agreement but refuses to execute it thus leaving open his options and leaving the Government unsure of his future services . . . , he should not be permitted at a later time to claim retroactive payments of the benefits or allowance.” B-192338 (Sept. 19, 1978).

successfully completed his initial two-year agreement for duty OCONUS. Prior to another OCONUS tour of duty, he telephoned his main office from the remote location at which he typically worked and furnished an administrative assistant the information necessary to prepare an employee renewal agreement and a request for travel authorization. Because he was in a remote location, the claimant orally requested the assistant to sign the necessary forms upon his behalf, which the assistant did. After the claimant had commenced his travel back to the United States, the agency rejected his renewal agreement because the claimant had not personally signed it. Although the claimant personally signed the renewal agreement after returning to his OCONUS post of duty, the agency believed that, based upon the language of 5 U.S.C. § 5728, it could not pay for travel that predated the agreement's execution. The Comptroller General rejected that argument:

This Office long ago recognized that the requirement for a written renewal agreement prior to departure [under 5 U.S.C. § 5728] is intended primarily for the protection of the Government. Where the Government's interests have not been adversely affected by an employee's delayed execution of a renewal agreement, we have authorized reimbursement of the expenses of home leave travel performed prior to execution of the agreement.

In this case, Mr. Groff's home leave was at least unofficially authorized in advance and his failure to personally execute a renewal agreement prior to departure was the result of administrative oversight, e.g., the failure to provide the appropriate form prior to his departure for leave. Furthermore, Mr. Groff both evidenced the intent to execute a renewal agreement prior to departure and personally signed an agreement upon return from home leave. In these circumstances, we can perceive no detriment to the Government's interests caused by Mr. Groff's delayed execution of his renewal agreement. . . . Mr. Groff may be reimbursed for the expenses of home leave travel.

Id. (citations omitted). See, e.g., *William G. Sterling*, CBCA 3424-RELO, 13 BCA ¶ 35,438, at 173,816 (“the absence of a service agreement will not defeat a claim for renewal agreement travel”); *George E. Lingle*, GSBCA 13946-TRAV, 97-2 BCA ¶ 29,292, at 145,720 (rejecting the agency's argument that “the lack of the renewal agreement during the period in which travel authorization was erroneously denied prohibits reimbursement for trips taken during the period”); *Maldonado*, 62 Comp. Gen. at 551-52 (“an employee's entitlement to [RAT] 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”); *John J. Daly, Jr.*, B-200945 (Aug. 24, 1981) (“[w]here the failure to execute the necessary agreement is an administrative oversight, round-trip travel expenses may nevertheless be paid”); B-131459 (May 6, 1957) (permitting

RAT expense recovery without written agreement signed prior to travel, provided employee executes after return from RAT).

The agency here rejected Mr. Chiles' RAT claim solely because Mr. Chiles had not signed the proper OCONUS transportation agreement before he took his RAT. The agency's position is plainly inconsistent with the rationale of the Comptroller General's decision in *Groff* and the other cases cited above. Before he departed on RAT, he made clear to the DCAA his intention to commit to a twenty-four-month extension of his OCONUS tour of duty, he evidenced that intention in writing, and he requested authorization for RAT. The DCAA approved his requests, and it prepared the paperwork that it believed necessary and appropriate to implement Mr. Chiles' request. Mr. Chiles, before departing on RAT, signed the papers that were presented to him by his agency's administrative office, believing that he was putting into effect his agreement to serve an additional twenty-four-month tour and to obtain authorization for RAT. When he was informed upon return from RAT that he needed to sign a new transportation agreement committing to his new twenty-four-month OCONUS tour, he did so. In fact, he has now completed that twenty-four-month tour and has been reassigned to a CONUS post effective February 22, 2015. In these circumstances, it is clear that the purposes of the statute authorizing RAT were satisfied, and Mr. Chiles is plainly entitled to payment for his RAT claim.

Decision

For the foregoing reasons, Mr. Chiles is entitled to payment of \$2343.92 as reimbursement for his RAT.

HAROLD D. LESTER, JR.
Board Judge