



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

April 8, 2015

CBCA 4421-RELO

In the Matter of ANDREA L. LeMAY

Andrea L. LeMay, Beaumont, TX, 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, a past employee of the Department of Justice, Drug Enforcement Administration (DEA), contests the agency's assessment of a debt of \$4140.78, which the agency assessed due to claimant's violation of a service agreement that claimant entered into associated with a permanent change of station (PCS) transfer from Chicago, Illinois, to Denver, Colorado. Claimant asks this Board to waive or pro-rate the debt.

The Board has no authority to waive an agency's assessment of a debt which is based on proper application of the Federal Travel Regulation (FTR). The authority to waive an employee's debt, such as the debt owed by Ms. LeMay, belongs to the head of the agency from which the debt arose. *RuthAnne S. Darling*, CBCA 1461-TRAV, 09-2 BCA ¶ 34,153; *Evan F. Meltzer*, CBCA 866-RELO, 07-2 BCA ¶ 33,708. However, the Board does have authority to settle claims involving expenses incurred by civilian employees for relocation expenses, so we can review DEA's decision to hold Ms. LeMay responsible for violating the applicable service agreement. 31 U.S.C. § 3702 (2012).

Background

As a condition of her employment as a DEA diversion investigator, claimant signed a mobility agreement on February 13, 2012, which obligated her to accept transfers and relocate based on DEA's needs and requirements. On July 25, 2013, claimant signed a

one-year service agreement, which became effective on her report date. Upon completion of training, claimant's reporting date to the DEA Denver Field Division was set for November 17, 2013, and claimant reported for duty at the DEA Denver Field Division on that date.

Claimant voluntarily resigned from DEA on August 13, 2014. DEA advised claimant of her debt obligation for relocation expenses incurred during her transfer from Chicago, Illinois, to Denver, Colorado, by letter dated October 10, 2014. On November 20, 2014, DEA made a demand for payment. Claimant acknowledged receipt of the DEA determination of the debt and requested agency review. DEA conducted an internal review of the debt determination and found that the debt was based on actual charges for the transportation of claimant's household goods and the adjusted PCS voucher. By letter dated December 18, 2014, claimant was notified that DEA had denied her appeal. On December 25, 2014, she asked the Civilian Board of Contract Appeals to review the agency's determination.

That claimant resigned from DEA and, by doing so, violated her service agreement, is not in issue. However, claimant posits that she "was presented with unforeseeable circumstances which would have led [her] into financial hardship had [she] maintained employment with the agency."

Claimant points to certain circumstances and events that impacted her decision to resign from DEA. In March 2014, claimant got married; her husband is also employed by DEA. Also, in the spring of 2014, claimant was informed by the homeowners' association that she could no longer lease a townhouse that she owned in Wisconsin. Claimant and her husband decided they would have to consolidate costs to avoid foreclosure of loan on the townhouse. Claimant and her husband approached their supervisors about potential transfers that would allow them to be co-located, but DEA was unwilling to accommodate a transfer.

Claimant decided to resign from DEA and return to work for her previous employer, who was willing to accommodate her desire to work from home, where she could live with her husband. Claimant writes:

I am requesting the debt to the agency be waived due to multiple attempts to work with the agency to ensure their needs were met while avoiding personal financial hardship. I have been serving the Federal Government in the military since 2007 and understand why policies such as this are in place; however, I had to do what was best for my family. The financial hardship could have jeopardized my security clearance.

Claimant also requests, if possible, that the debt be pro-rated to reflect the time she had left to serve in order to fulfil the service agreement, which claimant calculates to be three months and three days.

Discussion

When a government employee is transferred to a new official duty station within the continental United States on a permanent basis, the agency is authorized to pay travel and transportation expenses “only after the employee agrees in writing to remain in the Government service for 12 months after [the] transfer, unless separated for reasons beyond [the employee’s] control that are acceptable to the agency concerned. If the employee violates the [service] agreement, the money spent by the Government for the expenses and allowances is recoverable from the employee as a debt due the Government.” 5 U.S.C. § 5724(I) (2012).

This statute is implemented through the FTR at section 302-2.13, which provides: “you are required to sign a service agreement when transferring within or outside the continental United States.” 41 CFR 302-2.13 (2013). The FTR 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 claimant bears the burden of proof in a relocation case. *Gary Twedt*, GSBICA 16905-RELO, 06-2 BCA ¶ 33,433.

Claimant has not asserted that she was unaware of the requirements found in the service agreement or the potential consequences for their violation. She acknowledges she did not fulfill the terms of the agreement. Rather, claimant argues that she should not be held responsible for repayment of the debt because a change in circumstance impacted her ability to rent her townhouse, and she wanted to live in the same locality as her husband. Claimant also argues that to avoid foreclosure of the loan on her rental property and consolidate expenses, she had no choice but to resign when the requests for voluntary relocation were denied by the DEA.

While claimant may have made the correct personal and financial choice for herself and her future, her choice to resign and return to non-federal employment resulted in a breach of her service agreement. The Board has found that voluntary resignation is not a matter outside the control of the employee. *Kenneth Evans*, CBCA 3446-RELO, 14-1 BCA ¶ 35,484 (2013). In *Fred L. Tribbitt*, CBCA 1737-RELO, 10-1 BCA ¶ 34,384, at 169,750-51, we concluded:

This Board has recognized that it 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. *David F. Lytal*, CBCA 1433-RELO, 09-1 BCA ¶ 34,090; *Paula A. Shimata*, CBCA 1135-RELO, 08-2 BCA ¶ 33,901. We will not question the agency's exercise of its discretion so long as it has a reasonable basis. *Melinda K. Kitchens*, GSBCA 16639-RELO, 05-2 BCA ¶ 33,062; 46 Comp. Gen. 724 (1967); Comp. Gen. Dec. B-174823 (Jan. 26, 1972). Accordingly, our inquiry is limited to whether the agency properly exercised its discretion.

We have considered the arguments made by claimant. The record does not support a finding that claimant was forced to resign from DEA for reasons beyond her control. DEA did not abuse its discretion in holding claimant to the terms of the service agreement, or in refusing to pro-rate the amount due. Claimant has failed to sustain her burden of proof that she is not responsible for the debt.

Decision

The claim is denied.

PATRICIA J. SHERIDAN
Board Judge