



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

July 7, 2016

CBCA 5107-RELO

In the Matter of MARLON D. TOMAS

Marlon D. Tomas, Okinawa, Japan, Claimant.

Vouionette Burns-Harris, Human Resources Specialist, Employee Relations, 18th Force Support Squadron, Kadena Air Base, Department of the Air Force, Okinawa, Japan, appearing for Department of Defense.

CHADWICK, Board Judge.

Marlon D. Tomas applied for a position with the Department of the Air Force (USAF) in Okinawa, Japan, in December 2014. He was selected and eventually appointed. He seeks review of a denial of travel and transportation expenses for an appointment outside the continental United States. The USAF denied reimbursement on the grounds that Mr. Tomas was “presen[t] in Okinawa at the time of application.” Mr. Tomas acknowledges that he submitted his application from Okinawa and that he spent considerable time there in 2014, but he maintains that he lived in California at the relevant time. We grant the claim.

Background

Mr. Tomas submitted an application through USAJOBS for the position of sheet metal mechanic (aircraft) at Kadena Air Base in Okinawa. The position was posted from December 5 to 11, 2014. Mr. Tomas’s resume listed a home address in Winnetka, California. Mr. Tomas states that his spouse lives and works in Okinawa, but that he moved to California

in June 2014. Stamps on Mr. Tomas's United States passport show that he departed Okinawa on June 16, 2014, returned for an undetermined period starting on August 15, 2014, returned again from October 3 to 30, 2014, and returned again from November 20 to December 17, 2014, the period in which he submitted the application. Mr. Tomas acknowledges that he was employed in Okinawa by the Department of Defense Education Activity for a few days in September 2014. He also furnished evidence to the Board, however, that he registered a vehicle in California on June 16, 2014, registered to vote in Winnetka on June 17, 2014, obtained a California driver's license and rented a room in Winnetka on June 18, 2014, and started natural gas service at the Winnetka address in September 2014.

The USAF notified Mr. Tomas on January 9, 2015, that it had tentatively selected him for the mechanic position. Mr. Tomas electronically executed a statement of prior federal service (standard form 144) and a pre-employment declaration for federal employment on January 15, 2015. On April 10, 2015, Mr. Tomas submitted a request for travel and transportation expenses from Winnetka to Okinawa, which the USAF approved on April 13, 2015. Mr. Tomas's initial standard form 50 shows that he was appointed to the mechanic position in Okinawa on June 13, 2015.

On July 7, 2015, the USAF notified Mr. Tomas that it had revoked his travel orders for a permanent change of duty station after finding him ineligible for relocation expenses. The USAF stated that Mr. Tomas was eligible to enter Okinawa, through his spouse, a Department of Defense employee, under the United States–Japan Status of Forces Agreement (SOFA), and that he was “present in Okinawa under the [SOFA] until 17 Dec 14 In addition to your presence and SOFA status on Okinawa, you were also employed by the Department of Defense Education Activity” in September 2014. “As a result of your presence in Okinawa at the time of application, you are ineligible for travel and transportation entitlements.” On July 9, 2015, the USAF notified Mr. Tomas of his right to seek review by this Board.

Mr. Tomas filed a timely request for review in December 2015. In its response, filed in March 2016, the USAF noted that under the Joint Travel Regulations (JTR), which apply to Mr. Tomas, an employee is entitled to the expenses of relocating from the employee's “actual residence” to a duty station outside the continental United States, and that the “actual residence” for this purpose is where “the employee lived before selection for the appointment/assignment.” JTR 5826-A.1-2. The agency argued that Mr. Tomas is ineligible for reimbursement “[a]s a result of his presence in Okinawa, and [because] he continued to be claimed [by his spouse] as a dependent residing in Okinawa at the time of application,” by which the agency means that Mr. Tomas's family received a post allowance as if he lived on a military base. Neither Mr. Tomas nor the USAF provided any evidence of the post allowance, however, and Mr. Tomas stated in his request for review that he thought his

spouse took steps to reduce the post allowance. The USAF did not comment on any of the evidence that Mr. Tomas supplied the Board of his contacts with California.

The Board closed the record on May 4, 2016, after Mr. Tomas indicated he had no additional evidence to submit.

Discussion

A new appointee is entitled by statute to the expenses of relocating “from the place of actual residence at the time of appointment to [a] place of employment outside the continental United States.” 5 U.S.C. § 5722(a)(1) (2012). Read literally, this statute would rarely apply, since a new employee is “appointed” on his or her first day in the new position, Federal Travel Regulation (FTR), 41 CFR 302-2.4 (2014), and by then, presumably, already resides near the new job. *Cf. Milton Brown*, CBCA 4998-RELO, 16-1 BCA ¶ 36,205, at 176,662 (2015) (noting that if FTR provisions for “residence” transaction expenses “were applied literally, it would seem unlikely that an employee would *ever* obtain reimbursement for expenses incurred in purchasing a home at a new duty station, given that he or she would already have to live in the new duty station home when notified of the transfer.”). That is presumably why the JTR, applicable here, shift the focus from the time of appointment to the time of selection. The JTR authorize agencies to pay for relocation “from the [new] appointee’s actual residence at the time of *selection*/appointment,” and they further define the appointee’s “actual residence” as “the location at which the appointee lived *before selection* for the appointment/assignment.” JTR 5826.A.1-2 (emphasis added).

We have ample, consistent, and un rebutted evidence that Mr. Tomas lived in Winnetka, California, immediately before he was selected for appointment and, thus, that Winnetka was his actual residence for purposes of relocation under the JTR. Mr. Tomas’s California vehicle registration, driver’s license, voter registration, lease, and utility account are compelling indicia that he moved to Winnetka in June 2014. That Mr. Tomas applied for his position from Okinawa, and that he was “present” and briefly worked there at other times during 2014, as the agency emphasizes, do not establish that he lived in Okinawa after June 2014. Rather, Mr. Tomas’s passport shows that he traveled in and out of Okinawa in the second half of 2014. In addition, although neither party filed Mr. Tomas’s service agreement, the approval of his request for relocation expenses in April 2015 indicates that the USAF “document[ed]” Winnetka as his “actual place of residence” in the service agreement in accordance with 41 CFR 302-2.16, prior to his appointment.

The USAF argues that Mr. Tomas made inconsistent statements during the application and appointment process about his prior federal service, and it asserts, without supplying evidence, that Mr. Tomas’s spouse did not tell the base or SOFA authorities in Okinawa that

he had moved to California. We find, based on the evidence before us, that Mr. Tomas lived in Winnetka, California, when he was selected for appointment, regardless of what he or his spouse may or may not have said about this in other contexts.

Decision

The claim is granted.

KYLE CHADWICK
Board Judge