UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

May 17, 2016

CBCA 5052-RELO

In the Matter of BRADLEY HEBING

Bradley Hebing, Montgomery, AL, Claimant.

Danielle M. Trumpey, Chief, Analytical Division, Debt and Claims Management Office, Defense Finance and Accounting Service, Department of Defense, Indianapolis, IN, appearing for Department of Defense.

SOMERS, Board Judge.

Claimant, Bradley Hebing, a former employee of the Department of the Air Force (Air Force or agency), contests the agency's assessment of a debt of $16,372.06 incurred as a result of claimant's violation of a service agreement. Claimant asks the 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 applicable travel regulations. The authority to waive an employee's debt belongs to the head of the agency from which the debt arose. *Andrea L. LeMay*, CBCA 4421-RELO, 15-1 BCA ¶ 35,946 at 175,674, (citing *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 the authority to settle claims involving expenses incurred by civilian employees for relocation expenses, so we can review the Air Force's decision to hold Mr. Hebing responsible for violating his service agreement. *Id.* at 175,674-5 (citing 31 U.S.C. § 3702 (2012)).

Background

As part of a permanent change of station (PCS) from Maxwell Air Force Base, Alabama, to Joint Base Pearl Harbor-Hickam, Hawaii (Pearl Harbor-Hickam), Mr. Hebing signed a service agreement, which obligated him to complete twelve months of service at his new duty station.[1] The agreement informed Mr. Hebing of his obligation to repay the Government for travel and transportation and related allowances associated with the transfer of himself and his dependent if he did not complete the twelve months of required service at his new duty station.

After arriving at his new assignment, news of a possible reduction of force caused Mr. Hebing to fear losing his position. Consequently, Mr. Hebing sought employment in the private sector. He planned to work both jobs with the expectation that he would leave the DoD position after he completed his one-year commitment at Pearl Harbor-Hickam. Mr. Hebing's supervisor suggested that if Mr. Hebing chose to leave his DoD position early, he would not be required to repay the entire amount of debt incurred as the result of a violation of the service agreement. The supervisor provided Mr. Hebing with a "debt calculator," which indicated that Mr. Hebing would be obligated to pay $6,120.05 (using $27,846.23 as the total PCS costs) if he chose to leave his position early. Mr. Hebing decided to resign his position, based upon the pro-rated amount of debt Mr. Hebing believed he would incur, indicating in his resignation letter that he is "aware I have to pay back the Air Force a pro-rated amount for moving expenses based on the debt calculator provided."

By letter dated June 6, 2014, the Air Force advised claimant that he owed $16,372.06 for the debt incurred as a result of his PCS move. Mr. Hebing acknowledged receipt of the agency's determination of the debt and timely requested agency review. The agency conducted an internal review of the debt determination through an administrative hearing which involved a written review of the records pertaining to the debt. The debt consisted of $7,708 for Temporary Quarters Subsistence Expense, $7,070.67 for Relocation Income Tax Allowance, $1,300 for Miscellaneous Expense Allowance, and $293.39 for per diem and other PCS expenses. On June 30, 2014, the agency issued a decision which found that the

[1] The record indicates that Mr. Hebing signed one form, DD Form 1617, Department of Defense Transportation Agreement Transfer of Civilian Employees outside CONUS (OCONUS). Block I of the DD Form 1617 lists the effective date of Mr. Hebing's transfer as July 10, 2014, while Block 21 of the DD Form 1614, Request/Authorization for DoD Civilian Permanent Duty or Temporary Change of Station Travel lists the date as May 5, 2013. Since Mr. Hebing separated on April 14, 2014, it is unlikely that the date on the DD Form 1617 is correct.

debt was based on actual charges incurred. After considering all of Mr. Hebing's arguments, the agency concluded that, because Mr. Hebing did not fulfill his service commitment, the debt of $16,372.06 is valid.[2]

Mr. Hebing has appealed the agency's determination to the Board.

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 (2012). 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 in order to be reimbursed for relocation expenses. 5 U.S.C. § 5724(i): 41 CFR 302-2.13 (2013). If the employee does not fulfill the terms of the 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, including withholding tax allowance (WTA) and relocation income tax (RIT) allowance.").

Mr. Hebing seeks review of the agency's determination that he incurred a debt of $16,372.06 when he did not fulfill his service agreement, arguing that he should only be required to pay a pro rata portion of the debt. In essence, Mr. Hebing is seeking to retain a portion of the amount that the agency reimbursed him for the relocation expenses. "As the claimant demanding payment from the Government, [the claimant] has the burden of proving that [he] is entitled to reimbursement." *Renee Cobb*, CBCA 5020-TRAV, 16-1 BCA ¶ 36,240, at 176,819 (quoting *Gary Twedt*, GSBCA 16905-RELO, 06-2 BCA ¶ 33,433, at 165,744). "'[I]f the claimant establishes a *prima facie* case of entitlement to reimbursement . . . , the burden of production shifts to the Government to explain, and potentially to support with appropriate evidence, the reasons that the claimant's *prima facie* case does not support' reimbursement." *Id.* (quoting *Benjamin A. Knott*, CBCA 4579-RELO,

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[2] In the agency's final decision, the hearing official noted that "[e]xcluded from this debt are any amounts not paid for by the Air Force Financial Services Center. Mr. Hebing should also expect to be indebted by the Transportation Management Office for the cost of services provided by that office." We do not address any amounts owed to the Transportation Management Office, as they have not been included in the record and do not appear to be part of this case.

15-1 BCA ¶ 36,019, at 175,921 (citing *Thompson v. Haynes*, 305 F.3d 1369, 1376 (Fed. Cir. 2002)).

Mr. Hebing does not dispute that his service agreement required him to complete one year of service in order to be reimbursed for relocation expenses; nor does he claim to be unaware of the potential consequences of their violation. Rather, Mr. Hebing contends that, based upon information and guidance provided to him in the form of the Air Force Manual (AFMAN) and the "debt calculator," he understood that he would only be required to reimburse the agency for a portion of the relocation expenses paid. Specifically, Mr. Hebing explains that, in March 2014, he relied upon the guidance set forth in AFMAN 36-606, paragraph 1.23.10 (updated in January 2014), which states that "[a]n employee who fails to complete the terms of the Transportation Agreement (DD 1617 or DD 1618) for reasons unacceptable to the Air Force must reimburse the Air Force for the pro rata share of the PCS costs for the amount of unfinished time remaining and is ineligible for Air Force funded PCS allowances (see JTR C5588 for computation examples)." Mr. Hebing interpreted the manual to limit his liability for PCS costs to a "pro rata share," an amount he believes is consistent with the amount he calculated using the "debt calculator." Mr. Hebing understands that the agency intends to amend the AFMAN to correct the reference to "pro rata share of PCS costs," which Mr. Hebing perceives as an acknowledgment that the manual contained an error.[3]

We have considered Mr. Hebing's arguments that the agency provided incorrect information to him and that he acted in reliance upon that information. However, the fact that Mr. Hebing received incorrect information as a result of an error contained in the agency's manual or as a result of data obtained from the "debt calculator" does not provide a basis for overturning the agency's decision to deny his request for a waiver of the debt. As we have noted in a multitude of opinions, "The Government is not bound by the erroneous advice of its officials, even when the employee has relied on this advice to his detriment." *Daryl J. Steffan*, CBCA 3821-TRAV, 14-1 BCA ¶ 35,734, at 194,903 (quoting *Flordeliza Velasco-Walden*, CBCA 740-RELO, 07-2 BCA ¶ 33,634, at 166,580); *Sharon Hooley*,

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[3] It appears that the agency published a substantially revised version of AFMAN 36-606 on May 2, 2016. http://www.e-publishing.af.mil/production/1/af-A1/publication/afman36-606/afman36-606.pdf (last visited May 12, 2016). Paragraph 2.21.1.3 provides that if "the employee fails to complete the terms of the service agreement (DD Form 1618), the employee is in violation of the agreement. (JTR, para. 5836). The employee must reimburse the Government the costs paid for relocation expenses based on that service agreement and is not eligible for subsequent travel and transportation allowances."

CBCA 4949-RELO, 16-1 BCA ¶ 36,218; *Lisa A. Lindman*, CBCA 2893-RELO, 13 BCA ¶ 35,230, at 172,842 ("erroneous information cannot serve to expand entitlements not allowed by law") (citing *Kristin L. Loer*, CBCA 2155-RELO, 11-1 BCA ¶ 34,700; *Carl H. Welborn, Jr.*, CBCA 2151-RELO, 11-1 BCA ¶ 34,650 (2010); *Barbara A. Maloney*, CBCA 2023-RELO, 10-2 BCA ¶ 34,593; *Romeo Ayalin III*, CBCA 1533-RELO, 09-2 BCA ¶ 34,218); *Kevin R. Martin*, GSBCA 14879-RELO, 99-2 BCA ¶ 30,422, at 150,382 ("[I]t is well established that erroneous advice provided by Government officials cannot, in and of itself, provide a basis for reimbursement where no independent authority for such reimbursement exists."). Moreover, in assessing matters of erroneous advice, agency policy, whether oral or misstated in a manual, cannot be enforced if it conflicts with a statute or regulation. *Bruce Bryant*, CBCA 901-RELO, 08-1 BCA ¶ 33,737 (2007).

Here, as noted above, the applicable statute and regulation mandates that an employee who fails to complete a service agreement must reimburse all costs that have been paid by the agency for relocation expenses. The agency's determination not to waive this requirement "is a matter within the sole discretion of the agency, in accordance with its own regulations, and is not within the purview of this Board's review function." *Joseph F. Bond*, CBCA 3578-RELO, 14-1 BCA ¶ 35,559, at 174,247 (citing *Virgil G. Hobbs, III*, GSBCA 16625-RELO, 05-2 BCA ¶ 33,078, at 163,947; *Tripp Boone*, GSBCA 16023-RELO, 03-2 BCA ¶ 32,356, at 160,063).

Decision

For these reasons, claimant's appeal is denied. Claimant is indebted to the Air Force in the amount of $16,372.06.

JERI KAYLENE SOMERS
Board Judge