



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

February 12, 2016

CBCA 4691-RELO

In the Matter of RICHARD SAMUEL TABB

Richard Samuel Tabb, Hyattsville, MD, Claimant.

Vincent A. Salgado, Senior Associate Counsel, Commander, Navy Installations Command, Washington, DC, appearing for Department of the Navy.

VERGILIO, Board Judge.

The claimant, in a foreign location at a position without return rights, utilized the priority placement program (PPP) to obtain a job in the continental United States (CONUS). The claimant challenges the agency's position and the travel authorization which did not authorize reimbursement of residence transaction expenses. The agency concluded that the relocation back to CONUS was not primarily in the interests of the Government. The decision was not arbitrary, capricious, or clearly erroneous; therefore, the claimant was not entitled to reimbursement of residence transaction expenses.

The claimant, Richard Samuel Tabb, a civilian employee of the Department of the Navy, initially was transferred from within the continental United States (CONUS) to outside the continental United States (OCONUS) to a position without return rights (that is, the claimant was not guaranteed that the job he left would be available in the future should he seek to return). The job was for a three-year term. The overseas position was not eliminated by a reduction in force (such a situation could require a different analysis that need not here be addressed). After completing the three-year assignment, the claimant obtained a job in CONUS through the PPP. Under the program, the claimant had the option of accepting any valid position offered or face separation from federal service. The claimant did not obtain a job in response to a job announcement that said residence transaction expenses would be reimbursed. This new CONUS duty station was greater than fifty miles distant from his

former duty station. The authorization for the permanent duty station change did not authorize the reimbursement of residence transaction expenses. This resulted from the agency determination that the relocation was primarily for the claimant's interests, not the interests of the Government. The agency reasoned that had the claimant not opted for a job through the PPP, he would have been without a job at the completion of his overseas assignment. The claimant disputes the determination and claims entitlement to residence transaction expenses.

Benefits may accrue to an employee from an initial transfer CONUS to OCONUS and from a subsequent transfer from OCONUS to a new location within CONUS. Although the claimant received travel and transportation benefits for the CONUS to OCONUS relocation, there was no entitlement to receive real estate transaction reimbursements because of that transfer. 41 CFR 302-3.101 tbl. B (2012) (Federal Travel Regulation (FTR) 302-3.101 tbl. B).

Regarding the OCONUS to CONUS change of station, statute states that an agency must pay residence transaction expenses to an employee who "transfers in the interest of the Government." 5 U.S.C. § 5724a(d) (2012). As discussed in *Glenda F. Wall*, CBCA 3230-RELO, 13-1 BCA ¶ 35,397, and cases cited therein, transfers usually benefit both the Government and an employee. An agency's determination as to the primary beneficiary of a move (in the interests of the agency or not) is discretionary, and will not be overturned unless arbitrary, capricious, or clearly erroneous.

The agency determined here that the claimant was the primary beneficiary of the change in permanent duty stations, because without the job placement the claimant did not have a job at the conclusion of his assignment. Since the agency's rationale for concluding that the transfer was not in the interest of the Government is not arbitrary, capricious, or clearly erroneous, the Board will not overturn the conclusion. *Paul C. Martin*, CBCA 13722-RELO, 98-1 BCA ¶ 29,412 (1996). That the claimant would reach a different conclusion regarding the "interest of the Government" question is not material.

The Board concludes that the claimant is not entitled to residence transaction expenses.

JOSEPH A. VERGILIO
Board Judge