



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

February 14, 2017

CBCA 5312-RELO

In the Matter of DONALD W. HANSEN

Donald W. Hansen, Cary, NC, Claimant.

James E. Hicks, Office of Chief Counsel, Drug Enforcement Administration, Department of Justice, Springfield, VA, appearing for Department of Justice.

DRUMMOND, Board Judge.

Donald W. Hansen, a former employee of the Drug Enforcement Administration, (DEA or agency), contests the agency's assessment of a debt totaling \$8847.53, incurred as a result of his violation of a service agreement. Mr. Hansen asks the Board to waive the debt. Mr. Hansen also asks the Board to review the agency's denial of his claim for temporary quarters subsistence expenses (TQSE) for his dependents during his permanent change of station (PCS).¹ For the reasons stated below, Mr. Hansen's requests are denied.

Background

As part of a permanent change of station (PCS) from Nassau, Bahamas, to Charleston, South Carolina, Mr. Hansen signed a service agreement² in which he "agree[d] to remain in the employ of the United States Government for a period of not less than twelve months after

¹ Mr. Hansen alleges that the agency incorrectly denied \$1676.74 for TQSE claimed for his dependents in North Carolina.

² The record indicates that Mr. Hansen signed DEA Form 114 on June 24, 2015.

the date on which [he] report[ed] for duty at that duty station.” The agreement provided further:

I agree that if I fail to fulfill the terms of this agreement by resigning [or] voluntarily retiring . . . before the end of the twelve-month period, I will repay the United States Government all costs the Drug Enforcement Administration has paid towards my relocation expenses.

Mr. Hansen reported for duty in Charleston³ on July 21, 2015, while the rest of his family moved approximately 280 miles away to Cary, North Carolina. After excluding \$1676.74 for TQSE for his family, the agency reimbursed Mr. Hansen \$8847.53 for relocation expenses associated with his PCS move. Mr. Hansen retired in October 2015, three months and four days after his relocation.

The agency demanded that Mr. Hansen repay the \$8847.53 the agency spent for his move. Mr. Hansen asked the agency to waive the debt. After considering Mr. Hansen’s arguments, the agency concluded that, because he did not fulfill his service commitment, the debt of \$8847.53⁴ is valid. The agency declined to waive the debt. Mr. Hansen also asked the agency to reconsider its refusal to pay TQSE for his family. The agency denied this request as well.

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). To obtain reimbursement of relocation expenses, 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. 5 U.S.C. § 5724(i); 41 CFR 302-2.14 (2014). If the employee violates the agreement, unless he is separated for reasons beyond his control that are acceptable to the agency, the money spent for such expenses is recoverable from the employee as a debt due the United States. *See Robert E. Sanders*, CBCA 3737-RELO, 14-1 BCA ¶ 35,757; *Nancy C. Johnson*, GSBCE 16612-RELO, 05-1 BCA ¶ 32,931; 41 CFR 302-2.14.

³ Prior to his move, Mr. Hansen submitted a ten-office list of preferences to DEA’s Career Board. Charleston was his third preferred office.

⁴ There is no dispute concerning the debt calculation.

The Federal Travel Regulation (FTR) reiterates the caution as to the ramification of violating the agreement, characterizing the consequence as a penalty. 41 CFR 302-2.14. DEA emphasizes to its employees in an agency PCS advisory notice the requirement to remain in service. The advisory notice specifically advises employees that “[v]oluntary retirement is an optional form of retirement (as opposed to mandatory or disability retirement); therefore, it is considered within the control of the employee and is not acceptable to DEA as a basis for waiving relocation expenses.”

DEA has determined that because Mr. Hansen voluntarily retired within twelve months of his transfer to Charleston, he did not separate for reasons beyond his control which were acceptable to the agency. Consequently, the agency demanded that he repay the \$8847.53 it paid for his move to Charleston.

Mr. Hansen asks the Board to reject the agency’s determination for several reasons. He urges us to consider his long record of service; his feeling that the agency had wrongfully delayed his transfer and intentionally chose his third office of preference; the emotional toll of living separately from his family; and the financial burden of maintaining and commuting between two residences.

The determination whether to release an employee from a service agreement is a matter of agency discretion. *See David S. Garber*, CBCA 2400-RELO, 11-2 BCA ¶ 34,831, at 171,372 (citing *Kerry Flood*, GSBCA 16806-RELO, 06-1 ¶ 33,279, at 164,999); *Carlos N. Lacy*, CBCA 1059-RELO, 08-2 BCA ¶ 33,887, at 167,715. The Board will not overturn the agency’s denial of a waiver request unless there is no reasonable basis for the denial. *Jose A. Baeza*, CBCA 2097-RELO, 10-2 BCA ¶ 34,575, at 170,462 (citing *Fred L. Tribbitt*, CBCA 1737-RELO, 10-1 BCA ¶ 34,384; *David F. Lytal*, CBCA 1433-RELO, 09-1 BCA ¶ 34,090). We conclude that DEA’s determination with regard to Mr. Hansen’s separation from government service was consistent with the terms of the employee’s service agreement and the agency’s announced policy as to voluntary retirements. None of the matters as to which Mr. Hansen requests consideration have any bearing on this conclusion. Neither a record of long service, delays during transfers, not receiving a transfer to his first office of preference, nor separation from family members or personal struggles compels a finding that the employee’s decision to retire was anything other than voluntary and therefore an unacceptable reason for not fulfilling the service agreement. *See Charles L. Gravat*, CBCA 4448-RELO, 15-1 BCA ¶ 36,053; *Christopher W. Harding*, CBCA 4542-RELO, 15-1 BCA ¶ 35,990; *Andrea L. Lemay*, CBCA 4421-RELO, 15-1 BCA ¶ 35,946; *Dale W. Shepherd*, GSBCA 16921-RELO, 06-2 BCA ¶ 33,361. Although the agency head has the authority to waive the debt, we have no authority to do so. 5 U.S.C. § 5584(a); *Brian R. Wybrecht*, CBCA 5475-TRAV, 16-1 BCA ¶ 36,497; *Bradley Hebing*, CBCA 5052-RELO, 17-1 BCA ¶ 36,615 (2016).

Mr. Hansen also seeks review of the agency's decision to deny his claim totaling \$1676.74 for TQSE incurred by his family at a place other than at his old or new duty station. DEA is justified in denying Mr. Hansen's claim. The FTR authorizes agencies to reimburse employees for TQSE incurred by immediate family members only "within reasonable proximity of [the employee's] old and/or new official stations." *See* 41 CFR 302-6.9. It also states, "Neither you nor your immediate family may be reimbursed for occupying temporary quarters at any other locations." *Id.* The sole exception is for "special circumstances that are reasonably related to [the employee's] transfer." *Id.* The determination whether a particular situation constitutes such circumstances lies with the agency. *Ronald C. Williamson*, CBCA 728-RELO, 07-2 BCA ¶ 33,664. Additionally, the FTR allows an employee and his or her immediate family to occupy temporary quarters in different locations only if the temporary quarters are within reasonable proximity of the old or new duty station. *See* 41 CFR 302-6.10. DEA was justified in its determination that Cary is not within reasonable proximity of Charleston for purposes of TQSE reimbursement.

Mr. Hansen also argues that the DEA failed to "uphold its contractual obligation" and therefore he is entitled to the \$1676.74 claimed for TQSE. This argument lacks merit. "The courts have made clear that absent specific legislation, federal employees derive the benefits and emoluments of their positions from appointment rather than from any contractual or quasi-contractual relationship with the Government, so the employees' entitlement to benefits must be determined by reference to statute and regulation, rather than to ordinary contract principles." *Ann R. Facchini*, CBCA 2861-TRAV, 12-2 BCA ¶ 35,161 (citing several decisions of the Court of Appeals for the Federal Circuit). We have held that when an agency's regulations clearly set out TQSE requirements, the regulations bind an employee even if he received inadequate advice from the agency. *Christopher W. Harding*, CBCA 4542-RELO, 15-1 BCA ¶ 35,990. The agency argues that it provided Mr. Hansen with information relative to the relocation process twice, but he decided to ignore its guidance. Accordingly, we find that the agency correctly denied the request for TQSE.

Decision

For these reasons, Mr. Hansen's claim is denied. Mr. Hansen is indebted to the agency in the amount of \$8847.53. The agency correctly denied the \$1676.74 claimed for TQSE.

JEROME M. DRUMMOND
Board Judge