



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

May 19, 2017

CBCA 5598-RELO

In the Matter of RICHARD GONG

Richard Gong, Houston, TX, Claimant.

Cassandra Maximous and Geoffrey Harriman, Commercial and Administrative Law Division, Office of the Principal Legal Advisor, Immigration and Customs Enforcement, Department of Homeland Security, Washington, DC, appearing for Department of Homeland Security.

GOODMAN, Board Judge.

Claimant, Richard Gong, is an employee of the Department of Homeland Security (DHS), Immigration and Customs Enforcement (ICE). He has asked this Board to review what he characterizes as the agency's denial of his claim for relocation costs.

Factual Background

In 2010, claimant received permanent change of station (PCS) orders to transfer from Waco, Texas, to Guam pursuant to a twelve-month service agreement. While employed on Guam, claimant applied but was not selected for several agency positions located in the continental United States. He then filed multiple Equal Employment Opportunity (EEO) claims alleging discrimination. These claims were settled and the claimant and agency entered into an EEO settlement agreement dated December 17, 2015, which stated that "[t]his agreement constitutes the complete understanding between the [claimant] and the Agency. No other promises or agreements will be binding unless signed by both parties."

Pursuant to the EEO settlement agreement, the agency agreed to select claimant for one of the positions for which he had previously applied, located in Washington, D.C., and thereafter transfer him within thirty days to Houston, Texas. The EEO settlement agreement

did not provide for government payment of relocation benefits. Also, the job posting for the position stated: “Relocation expenses will not be paid.” The agency states that at no time did the agency commit that it would pay for claimant’s relocation from Guam to the continental United States, a move that was primarily in Mr. Gong’s interest rather than the interest of the Government.

In January 2016, claimant moved from Guam to the continental United States to take the new position. In February 2016, claimant corresponded with the Section Chief–Operations Management, Human Resources Unit of the agency in two email messages that appear to be inquiries as to how to he could file a claim for relocation expenses.¹ No documentation was attached to the email messages. The addressee of the email messages responded to the second inquiry by email message dated February 12, 2016, as follows:

Please see the link below to the PCS policy. As I previously informed you, the position in Guam is not rotational and you are not entitled to PCS. I do not know what the other situations were for the “other DHS/ICE employees who PCS to Guam [and] received a PCS back to the mainland.”^[2] I have provided you with all of the information that we have regarding PCS. Should you have any further questions and/or concerns, please refer to the guidance found in the link below: <https://ofmonline.ice.dhs.gov/pcs/Pages/default.aspx>.

Claimant considered this response to his inquiry a denial of his request for reimbursement of relocation costs. He submitted this claim to the Board for review of the alleged denial with letters dated December 19, 2016, and January 9, 2017.

Claimant’s letter dated December 19, 2016, stated that he “wish[ed] to file an appeal for the denial of my permanent Change of Station. . . . The agency has denied my claim of relocation.” Attached to this letter were the email message from the agency employee quoted above, which claimant considers the denial of his claim; the twelve-month service agreement; claimant’s 2010 PCS orders from Texas to Guam ; and an itemized statement by category of relocation costs allegedly incurred in the amount of \$44,362. This list of relocation costs had not been sent to the agency.

¹ The first email message states: “Which DAD and AD may I write to regarding the PCS?” The second email message states: “I have not received a response as to who is the DAD and AD regarding PCS?” The meanings of the acroynyms DAD and AD are not clear from the record.

² This statement indicates that there was additional communication between claimant and the recipient of his email message which is not in the record.

Claimant's subsequent letter to the Board, dated January 9, 2017, read in relevant part:

In 2010, I was relocated from Texas to Guam based on an official U.S. Department of Homeland Security "Notice of Station Change" Form G-119. Please see my letter dated December 19, 2016 along with the supporting documents. In December 2015, I accepted a position . . . in Houston, TX. The Agency (U.S. Immigration and Customs Enforcement) has refused to pay for my relocation back to Texas. As requested, I am submitting a statement of expenses that I paid to facilitate my relocation.

The remaining contents of this letter were a list of categories of costs allegedly incurred by claimant with the notation next to each category—"Available upon request"—and the following statement by claimant after the list:

The Board should not review the expenses I have paid because this may set a precedent in federal agencies not authorizing relocation expenses. This will force federal employees to file appeals and maybe reimbursed for actual expenses relieving a federal agency of their obligations for relocation expenses.

In light of claimant's statement above, requesting that the Board not review the expenses incurred, it appears that claimant is only asking for the Board to determine his entitlement to relocation costs. Claimant submitted no documentation to support his contention that the government intended to reimburse him for relocation expenses for his transfer to Washington, D.C., and Houston. He did not submit his orders transferring him to the position in Washington, D.C. and Houston. Such orders usually indicate if reimbursement of relocation costs is authorized.

Discussion

Congress vested authority in the Administrator of General Services to "resolve claims involving expenses incurred by Federal civilian employees . . . for relocation expenses incident to transfers of official duty station," 31 U.S.C. § 3702(a)(3) (2012), an authority that the Administrator has redelegated to the Board. CBCA Rule 401 defines the procedures that apply to the Board's review of "[c]laims for reimbursement of expenses incurred in connection with relocation to a new duty station." 48 CFR 6104.401(b) (2014). Rule 401(c) provides:

Any claim for entitlement to travel or relocation expenses must first be filed with the claimant's own department or agency (the agency). The agency shall

initially adjudicate the claim. A claimant disagreeing with the agency's determination may request review of the claim by the Board. The burden is on the claimant to establish the timeliness of the claim, the liability of the agency, and the claimant's right to payment. The Board will issue the final decision on a claim based on the information submitted by the claimant and the agency.

Respondent asserts that claimant has offered no evidence that he first filed his claim with the agency, and therefore, the Board has no authority to resolve his claim. *See Donald L. Baker*, CBCA 3439-RELO, 14-1 BCA ¶ 35,728, at 174,894; *Richard P. Fenner*, CBCA 3207-RELO, 13 BCA ¶ 35,341, at 173,461.

The agency states:

[Claimant] has made no showing that he formally presented his claim to the agency; rather, he appears only to have sent emails to various Human Resources employees asking about the propriety of relocation compensation. . . . It is not clear that [claimant]'s emails to various low-level ICE employees without proper documentation constitute adequate presentment of his claim to the agency.

The agency asserts further in its response to the claim that if the Board finds claimant's submissions to have been a claim that was in fact adjudicated, claimant would then not be entitled to relocation compensation because claimant had not been authorized reimbursement of relocation expenses for his transfer from Guam and his transfer was not in the interest of the Government but primarily for his convenience. Claimant filed an extensive reply to the agency's response, raising additional grounds of entitlement to relocation costs, to which the agency filed an extensive reply.

We do not address the issue of entitlement, because we find that claimant has not submitted his claim to the agency for adjudication. There is no indication that the email message from the agency's employee in response to claimant's general inquiry was in response to anything other than two one-sentence e-mail messages from claimant requesting guidance. No written claim for a specific dollar amount or supporting documentation was attached to claimant's inquiry to the agency. While the agency employee's response contained a statement that claimant was "not entitled to PCS," this was not in response to a claim, nor is there any indication that the responder had authority to adjudicate a claim. As claimant has not filed a claim with the agency for adjudication, we must dismiss this case.

Decision

The claim is dismissed, as it has not been adjudicated by the agency. The agency is directed to inform claimant as to the name, position, and address of the agency official who has the authority to adjudicate claims for relocation expenses.

ALLAN H. GOODMAN
Board Judge