



UNITED STATES  
CIVILIAN BOARD OF CONTRACT APPEALS

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October 5, 2017

CBCA 5801-RELO

In the Matter of DANIEL T. MATSUO

Daniel T. Matsuo, Lee, NH, Claimant.

Stuart W. Belt, Ship Repair Facility and Japan Regional Maintenance Center, Department of the Navy, FPO Area Pacific, appearing for Department of the Navy.

**GOODMAN**, Board Judge.

Claimant, Daniel T. Matsuo, a civilian employee of the Department of the Navy, has requested this Board to review the agency's denial of reimbursement of relocation expenses that he incurred during a permanent change of station (PCS).

Factual Background

On January 20, 2008, claimant was issued PCS orders to transfer from his position at the Pearl Harbor Naval Shipyard and Intermediate Maintenance Facility, Hawaii (PHNSY & IMF) to a new position at the the U.S. Naval Ship Repair Facility and Japan Regional Maintenance Center in Sasebo, Japan for an initial overseas appointment of thirty-six months. During this initial tour, claimant had statutory return rights to PHNSY & IMF.

On November 30, 2009, claimant was offered and accepted a twenty-four-month tour extension, bringing this overseas appointment to five years. During this first tour extension claimant retained return rights to PHNSY & IMF. Subsequently, on April 11, 2012, claimant was offered an additional twenty-four-month extension. In the offer documentation, claimant was advised that extensions beyond five years may result in forfeiture of statutory return rights if not extended by PHNSY & IMF. Claimant voluntarily accepted the offer on April 18, 2012. PHNSY & IMF did not extend claimant's return rights.

On July 18, 2014, claimant was offered a final twenty-four-month extension, totaling nine years on his overseas appointment. Claimant voluntarily accepted the extension, moving the expiration date of his overseas appointment to January 19, 2017. No further extensions were offered to claimant.

On August 1, 2016, claimant registered in the Priority Placement Program (PPP),<sup>1</sup> as his return rights had been voluntarily forfeited years earlier and his overseas appointment was set to expire on January 19, 2017. On April 1, 2017, claimant accepted a PPP job offer for employment at the Portsmouth Naval Shipyard, Portsmouth, New Hampshire. Travel orders were issued on May 11, 2017, and did not include reimbursement of real estate expenses.

Before departing from Japan, claimant raised the issue as to his entitlement to real estate expenses. He stated that he had been advised in training that he would be reimbursed for such expenses,<sup>2</sup> and alleged that his transfer was in the interest of the Government. By e-mail message dated July 6, 2017, the agency stated its determination that he was not entitled to real estate expenses, as his transfer was not in the interest of the Government. The agency's denial stated that "your relocation back to CONUS [Continental United States] was not primarily in the interest of the Government because without the job placement through PPP, you would not have a job at the conclusion of your assignment."

On July 6, 2017, claimant departed Japan on travel orders; effective July 9, 2017, he reported to Portsmouth Naval Shipyard. Claimant was aware that his request for real estate expenses was denied prior to the purchase of his new home at the new duty station.

Claimant seeks reimbursement of \$8592.50 in closing costs incurred for purchase of his new residence at the new duty station, and he has asked this Board to review the agency's denial of entitlement to such costs.

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<sup>1</sup> PPP is the primary Department of Defense program for employees without statutory return rights to obtain a position in the United States. As an employee without return rights seeking a position under the PPP, claimant had the option of accepting any valid position offered or face separation from federal service.

<sup>2</sup> Claimant has submitted a statement from another employee who attended training who alleges that "during the training, the real estate allowance was relayed to us as a mandatory allowance that the losing command must pay. The trainer did not state any restriction of the real estate allowance in regards to whether it was deemed in the employee[']s or government[']s interest."

### Discussion

Benefits may accrue to an employee from an initial transfer from CONUS to OCONUS (Outside the Continental United States) and from a subsequent transfer from OCONUS to a new location within CONUS. 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 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 is discretionary and will not be overturned unless arbitrary, capricious, or clearly erroneous.

In the instant case, the agency determined that claimant’s transfer was primarily to his benefit, not the Government’s. The rationale for that determination was the fact that claimant had voluntarily relinquished his return rights and was registered in the PPP. Without the job placement and preferential status through PPP, claimant would lose his job at the end of his assignment. The agency states that it carefully reviewed and deliberated upon the issue of whether to offer the payment of real estate expenses prior to making its decision.

In *Richard Samuel Tabb*, CBCA 4691-RELO, 16-1 BCA ¶ 36,252, the agency under similar circumstances determined that an employee’s transfer was not in the interest of the Government. In that case, the employee, similar to claimant in the instant case, was registered in the PPP, and the agency, using the same rationale as the agency here, determined that the employee was the primary beneficiary of the change in permanent duty station, because without the job placement the claimant did not have a job at the conclusion of his assignment. This Board held:

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. . . . That the claimant would reach a different conclusion regarding the “interest of the Government” question is not material.

16-1 BCA at 176,865 (citation omitted).

We follow the reasoning in *Tabb*, and find that the agency’s determination that claimant’s transfer was not in the interest of the Government was not arbitrary, capricious, or clearly erroneous, and we therefore will not overturn that determination. Whatever information claimant or others may have received during training does not negate the

agency's determination with regard to claimant's circumstances nor create entitlement to reimbursement of real estate expenses.

Decision

The claim is denied.

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ALLAN H. GOODMAN  
Board Judge