UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

September 19, 2017

CBCA 5676-RELO

In the Matter of XAVIER F. MONROY

Xavier F. Monroy, Busan, Korea, Claimant.

Kendra O. Finklea, Labor and Employee Relations Division, Human Resources Office, Navy Region Japan, Department of the Navy, FPO Area Pacific, appearing for Department of the Navy.

LESTER, Board Judge.

Claimant, Xavier F. Monroy, retired in August 2014 from a civilian position with the Department of the Navy's Military Sealift Command (MSC or agency) in Busan, Korea. When he was hired for the position in 2006, he signed a transportation agreement that authorized him, if he fulfilled his obligations under the agreement and then retired from government service while still in Busan, to receive separation travel and transportation expenses for his return to the United States or an alternate destination. When he retired, though, he elected to take a position with a non-federal employer in Busan. Subsequently, after a change in his medical condition affected his employment situation, Mr. Monroy asked the MSC to allow him to utilize his household goods (HHG) shipment entitlements, and he ultimately submitted his claim to the Board asking that he be allowed to incur and be reimbursed for HHG expenses now so that he can depart Korea.

Although we sympathize with Mr. Monroy's current situation, and although the agency initially provided Mr. Monroy with incorrect information about his return rights that might have negatively impacted his decision-making process, we have no authority to waive the time limitations for incurring HHG transport expenses set in the applicable regulations. As a result, we have no choice but to deny Mr. Monroy's claim.

Background

In 2000, after retiring as a service member in the United States Marine Corps, Mr. Monroy accepted a position as a civilian employee with the Department of the Army. On August 6, 2006, Mr. Monroy was transferred through a Department of Defense rotation program from his Army position to a position in Busan with the MSC. As a condition of his employment in Busan, Mr. Monroy signed a rotation agreement through which he agreed to remain in his position for a full thirty-six-month tour of duty. Mr. Monroy also executed a separate transportation agreement indicating that, if he completed his initial tour of duty in Busan and was not transferred from Busan to a new position in the United States, he would be eligible for return travel and transportation allowances at government expense for himself, his dependents, and his HHG. Although his original appointment was to last thirty-six months, his overseas tour was extended several times.

Mr. Monroy voluntarily retired from government service effective August 23, 2014, while still in Busan. In anticipation of Mr. Monroy's retirement, the agency issued official travel orders dated August 12, 2014, authorizing Mr. Monroy's return from Busan to his actual place of residence in the United States or, as an alternate destination, to Okinawa, Japan. In those travel orders, the agency also authorized HHG shipment and the temporary storage of HHG. The agency indicated in the travel orders that Mr. Monroy had one year to use his travel allowances.

Upon retiring, Mr. Monroy decided to accept a position with a company in Busan, and he maintained his residence in Korea while working for the company there. He did not immediately utilize any of his return travel and transportation allowances.

In June 2015, over ten months after retiring, Mr. Monroy asked his agency's human resources office (HRO) about extending his travel allowances for an additional year so that he could ship his HHG to Okinawa, using his travel allowances, in 2016. At that time, Mr. Monroy offered no reason for the extension request. Mr. Monroy subsequently indicated that he would be able to schedule shipments of his HHG to Okinawa at a reasonable cost on August 23, 2015, but that shipments prior to that date were prohibitively expensive. By email message dated July 27, 2015, the HRO deputy director informed Mr. Monroy that his travel order entitlement would expire on August 12, 2015 – one year from the date of his travel orders – and that the agency would not extend his entitlement because he had not presented any extenuating circumstances in support of the request. Mr. Monroy failed to use this entitlement prior to the identified August 12, 2015, deadline or at any time since then.

Subsequently, in June 2016, Mr. Monroy apparently had to end his employment with the company in Korea for unexpected medical reasons, which had rendered him unable to

work. Several months later, Mr. Monroy and his wife decided that it would be best for them to move to Okinawa to be near his wife's family. Mr. Monroy's wife has since departed Korea to make arrangements for their move while Mr. Monroy continues to receive medical treatment in Korea.

On March 13, 2017, Mr. Monroy submitted the current claim to the Board, challenging the agency's refusal to extend his return travel and transportation allowances. He argues that, over the course of his career as a government employee and service member, he never made use of any of his travel entitlements and that the resulting cost savings to the Government should be considered in evaluating his right to such costs now. He appears to limit his current request to the shipment of his HHG from Busan to Okinawa. He has not yet shipped his HHG to Okinawa because, he states, he does not have the funds to do so.

The agency argues in response that, based upon the regulations in effect on the date that Mr. Monroy retired, Mr. Monroy's HHG allowances expired one year after his separation travel orders were issued. It asserts that, because he failed to incur his HHG transportation costs by August 12, 2015 (one year from the issuance of his travel orders), he cannot now claim HHG allowances.

Discussion

I. The Regulations Applicable to Mr. Monroy's Separation Travel Allowances

"Separation travel applies when an employee is separating from [a duty station outside the continental United States (OCONUS)] (for instance for the purpose of retiring from Government service) and returning to the employee's actual residence [at the time he or she accepted the OCONUS tour of duty] or an alternate location." Joint Travel Regulation (JTR) C4011-11 (Aug. 2006). By statute, if an employee separates from the Government after fulfilling his or her obligations under the service agreement that he or she signed when accepting the OCONUS post, the employing agency is obligated to pay the employee's separation travel costs when the employee's overseas tour of duty concludes. 5 U.S.C. §§ 5722, 5724(d) (2012). Those costs include one-way transportation expenses for the employee, for his or her family members, and for the employee's HHG. 41 CFR 302-3.300 (2006).

The agency does not contest that Mr. Monroy was entitled to separation travel costs when he decided to retire while still in Busan, but it believes that he has waited too long to use the benefit. There is no question that agencies can impose time limits upon an employee's separation travel and transportation allowances. "The imposition of a time limitation ensures that an employee's travel is clearly incidental to the separation and that the

travel will begin in a reasonable time." *Patrick R. Gillen*, GSBCA 15748-RELO, 02-2 BCA ¶ 31,869, at 157,457. Unless the employee's return travel is tied to and caused by his separation from the Government while on OCONUS duty, costs that the employee may *eventually* incur for a return from overseas are not the result of his OCONUS employment, and there is no basis upon which those costs may "be authorized at public expense." *Id.*; *see* 28 Comp. Gen. 285, 289 (1948) ("Where an employee does not return to the United States as an incident to the termination of his assignment outside the United States, the statutes may not reasonably be construed as authorizing the payment of any of the expenses connected with [his] return.").

Unfortunately, the agency has provided Mr. Monroy with incorrect information about his separation travel rights, beginning when he retired and continuing when he subsequently inquired about a possible extension of his return HHG transport allowance. Even now, the agency has argued that Mr. Monroy had one year from the date of his travel orders, which were issued before he separated, to use his separation allowance, citing to the version of section 302-2.8 of the Federal Travel Regulation (FTR) in effect at the time that Mr. Monroy retired in 2014. *See* 41 CFR 302-2.9 (2014). This is not the regulation applicable to Mr. Monroy's situation.

The FTR expressly provides that an employee's "entitlements and allowances for relocation are determined by the regulatory provisions that are in effect at the time [the employee] report[s] for duty at [his or her] new official station." 41 CFR 302-2.3 (2014). "These entitlements and allowances include those for relocation back to the United States," or a designated alternate location, "upon separation from service at an OCONUS post of duty." *Kenneth J. Dexter*, CBCA 3130-RELO, 13 BCA ¶ 35,236, at 172,998; *see Ernestine Pouncy*, GSBCA 16859-RELO, 06-2 BCA ¶ 33,437, at 165,749 (regulations in effect on date of employee's transfer to duty station define return travel rights). Accordingly, the regulations to which the agency should have looked to define Mr. Monroy's separation travel rights are those that were in effect on August 6, 2006, when Mr. Monroy first reported to his duty station in Busan, not those in effect on August 12, 2014, when his travel orders were issued, or on August 23, 2014, when he retired.

The agency may be suggesting that, because Mr. Monroy executed several renewal agreements extending his tour of duty in Busan, the regulations that control his separation travel rights should be those in effect on the date of his last renewal agreement in 2013, rather than the 2006 date upon which he first reported for OCONUS duty in Busan. If that is the agency's argument, it is wrong. Section 302-2.3 of the FTR plainly applies the regulations in effect when the employee first reports to the "new official station." 41 CFR 302-2.3 (2014). A renewal agreement merely extends an employee's stay at the *existing* official station. A renewal agreement can establish the employee's travel allowance

eligibility so that he or she can return home on leave between consecutive periods of OCONUS employment, JTR C5604-D.1 (Aug. 2014), but it does not void those rights to return travel and transportation allowances that were created through the employee's fulfillment of his or her initial agreement. 41 CFR 302-2.18. Those rights, including those relating to HHG, are created when the employee signs the initial agreement, *see Faithon P. Lucas*, GSBCA 15107-RELO, 00-2 BCA ¶ 30,958, at 152,782 n.1, and they vest when the employee fulfills his or her obligations under the initial agreement. *See Department of the Army*, B-199643 (Sept. 30, 1981) (an extension of an employee's original OCONUS tour of duty, effected through a renewal agreement, "does not negate the employee's entitlement to separation travel at the completion of the prescribed tour of duty"). In fact, the JTR in effect at the time of Mr. Monroy's initial agreement makes clear that "[a] Component must not execute an administrative extension of an initial agreement to negate an employee's authorization for separation travel and transportation allowances." JTR C4005-C.1.c (Aug. 2006). Mr. Monroy's execution of renewal agreements does not change or negate the applicability of the return travel rights that accrued to Mr. Monroy through his initial agreement to report for duty in Busan.

The regulations that govern Mr. Monroy's separation travel allowances are those that were in effect when he reported for duty in Busan in 2006.

II. Time Limits on Mr. Monroy's Separation Travel Allowances

In 2006, the FTR did not expressly identify the length of time that an OCONUS civilian employee, other than an employee in the Senior Executive Service (SES), had to use his return travel and transportation allowances after he had separated from government service.[1] Nevertheless, the 2006 FTR imposed a two-year limit upon an employee's ability to incur reimbursable relocation costs in *arriving* at that duty station (or, at least, for family members and HHG to depart for the duty station after the employee started OCONUS work), with the deadline running from the date of the employee's transfer or assignment to the new OCONUS duty station:

[1] Two FTR provisions, listed under the umbrella heading "SES Separation for Retirement," provided that all HHG return transportation had to begin six months after the employee's date of separation, but that the agency could grant an extension of that deadline, not to exceed two years from the effective date of separation. 41 CFR 302-3.314, -3.315 (2006). Those provisions only applied to SES employees. They are inapplicable here.

> **When must I complete all aspects [of] my relocation?**
>
> You and your immediate family member(s) must complete all aspects of your relocation within two years from the effective date of your transfer or appointment, except as provided in § 302-2.9 [regarding military furloughs] or § 302-2.10 [relating to delays arising from shipping restrictions imposed by the post of duty].

41 CFR 302-2.8 (2006).[2] Although the language of this provision is directed to the date of the employee's *arrival* at a *new* duty station, the Comptroller General long ago held that "[t]here is no reason why the said provisions [of a predecessor version of the FTR] should be construed any differently in cases where the United States is to assume the travel and transportation expenses of employees who are being *returned* from posts of duty [OCONUS]." 28 Comp. Gen. 285, 289 (1948) (emphasis added); *see Robert R. Schott*, 57 Comp. Gen. 387, 388 (1978) ("our decisions have applied this time limitation to return travel following separation"); *James P. O'Neil*, B-182993 (Aug. 13, 1975) (applying regulation to return travel). Accordingly, the Comptroller General consistently applied the rationale underlying this regulation to establish a firm two-year limit on *return* travel, running from the date of the employee's separation from government service at the OCONUS duty post. *O'Neil*, B-182993.

The Department of Defense, applying an FTR provision directing agencies to implement policies regarding when to extend employees' deadlines for beginning separation travel, 41 CFR 302-3.500(c) (2006), established in the JTR that was in effect in 2006 that an individual would be viewed as violating his or her transportation agreement, and losing his or her right to travel and transportation allowances, if he or she failed "[t]o use travel and transportation allowances within a reasonable time after separation." JTR C4007-4 (Aug. 2006). The 2006 JTR contained the following direction, consistent with the version of 41 CFR 302-2.7 then in effect, regarding the specific time limits that it would impose upon separation travel:

---

[2] Section 301-2.11 of the FTR provided for the possibility that "[t]he two-year limitation may be extended, for up to an additional two years, but only if there ha[d] been an extension granted under FTR 302-11.22" for completing residence real estate transactions. *Ernestine Pouncy*, 06-2 BCA at 165,749; *see* 41 CFR 302-11.22 (2006). There are no such expenses at issue here, rendering the two-year extension provision irrelevant.

> Refusal to Accept/Use Return Travel and Transportation Allowances within a Reasonable Time after Release from Duty . . .
>
> a. A separating employee loses return travel and transportation allowances when the employee refuses to accept/use them after release from work status in the OCONUS position.
>
> b. An OCONUS activity commanding officer may authorize a delay for a reasonable period upon receipt of an employee's written request. Ordinarily, a delay of 90 or less calendar days is reasonable. Under unusual extenuating circumstances that, in the opinion of the OCONUS activity commanding officer warrant a longer delay, return travel may be delayed up to 2 years from the separation date.

JTR C5085-C.2 (Aug. 2006).

Our predecessor board for travel and relocation matters, the General Services Board of Contract Appeals (GSBCA), interpreted the language contained in this JTR provision (previously contained at JTR C4202-B (Jan. 2001)) as "provid[ing] for a ninety-day window for an employee's return home under routine conditions," subject to an extension of up to two years from the separation date in unusual extenuating circumstances. *Richard J. Waldo*, GSBCA 16235-RELO, 04-1 BCA ¶ 32,465, at 160,581 (2003). The JTR provides specific guidance for Department of Defense personnel and is controlling when not in conflict with the FTR. *E.g.*, *Denise M. Szelag*, CBCA 5697-RELO, 17-1 BCA ¶ 36,813, at 179,413; *Michael R. Lujan*, CBCA 4613-RELO, 15-1 BCA ¶ 36,096, at 176,235; *Richard J. Waldo*, 04-1 BCA at 160,580. Because "an agency may, by regulation, define a period shorter than 2 years within which separation travel should normally begin," *Clarence L. Aiu*, B-204286 (June 12, 1984), the ninety-day limitation that the JTR has been interpreted as creating, subject to a possible discretionary extension by an authorized official of up to two years from the date of separation, has long been upheld as permissible. *See Alma B. Cobb*, B-134348 (Jan. 27, 1975).

In addition, though, JTR C5085-C.2.c (Aug. 2006) provided that "[r]equests for delays from an employee separating OCONUS to accept private OCONUS employment/retire locally to establish an OCONUS retirement residence must not be approved." The GSBCA recognized that, although the JTR provision provides for the possibility of an extension beyond the ninety-day window of up until two years from the date of separation, "the regulation flatly prohibits a delay for persons to accept private OCONUS employment or to retire locally." *John M. Pemberton*, GSBCA 15372-TRAV, 01-2 BCA ¶ 31,541, at 155,712. "[A]cceptance of private employment at the termination location generally requires the view

that subsequent return travel is not incident to the separation." *Consuelo K. Wassink*, 62 Comp. Gen. 200, 202 (1983). Accordingly, "if the employee elects to remain overseas, as generally would be true when he accepts private employment overseas in lieu of returning to his place of actual residence" or his designated alternate location, he forfeits his return travel allowances. 37 Comp. Gen. 502, 504 (1958).

Technically, the agency should originally have advised Mr. Monroy that he had only ninety days from the date of his separation (rather than from the date of his prematurely issued travel orders) to use his return travel and transportation allowances and, once the agency learned that he was electing to stay in Busan to accept non-federal employment, that the agency could not extend his allowances. Instead, applying a 2011 regulatory change that reduced the two-year limit for incurring relocation costs to a one-year limit, *see* 76 Fed. Reg. 18326, 18336 (Apr. 11, 2011), the agency mistakenly told him that he had a year to use his return travel and transportation costs. We need not decide here whether, had Mr. Monroy actually used his benefits within that year (an amount of time still within the overall two-year limit imposed by the FTR at that time), he would have been entitled to reimbursement. *See Tegualda Monreal, M.D.*, B-201888 (Feb. 19, 1982) (allowing reimbursement when employee was told that she had two years within which to use her return travel allowances). Because Mr. Monroy has not incurred any such expenses and the time period that the agency identified has expired, he has no basis for recovering such costs.

We recognize that the 2006 JTR carved out the possibility that, even "[i]f the employee loses/does not use [his own] personal travel and transportation allowances, the employee is [still] authorized travel and transportation allowances for dependents and HHG, provided that travel and transportation allowances are used within a reasonable time." JTR C5085-D.1 (Aug. 2006). The JTR indicated, though, that HHG transportation from the OCONUS area still had to "begin as soon as practicable after the employee's effective date of . . . return for separation." JTR C5165-H.3.a(1) (Aug. 2006). Further, it identified a firm not-to-exceed two-year limit on return HHG transport, and it indicated that the guidance of JTR C5085-C.2 (Aug. 2006), including its presumption that a ninety-day limit for use of separation travel allowances is reasonable and that any extensions beyond that ninety-day period (up to a maximum limit of two years from the date of separation) may be granted in "unusual extenuating circumstances," applied to any HHG return transport time limit determinations in the same way that it applied to an employee's personal return travel:

> When an employee returns from an OCONUS assignment for separation the following conditions apply:
>
> (1) The HHG transportation authorization . . . is forfeited if not used within a reasonable time (not to exceed 2 years) after separation.

> (2) Upon a written request from the employee or surviving dependents, the OCONUS activity commanding officer may authorize delayed HHG transportation from the OCONUS area, under par. C5085-C2 [with a maximum limit of two years from the date of employee separation].

JTR C5165-H.3.c (Aug. 2006). In the circumstances here, JTR C5085-D.1 does not provide Mr. Monroy with any additional right to HHG transport allowances beyond those that were not forfeited pursuant to JTR C5085-C.2.

In any event, even if we authorized extensions on his eligibility to incur HHG transport expenses to the maximum extent possible, it would not assist Mr. Monroy. He has yet to ship any HHG, and it has been more than two years since Mr. Monroy's separation from the agency. The agency has no authority to grant extensions beyond that two-year limit, even in the best of circumstances. *Ernestine Pouncy*, 06-2 BCA at 165,750. Although Mr. Monroy may have abandoned previous plans to ship his HHG within that two-year period because the agency had told him that it would not reimburse him, erroneous guidance by the agency "cannot serve to enlarge an entitlement that is restricted by statute and regulation." *Id.* It is simply too late to incur HHG transport costs now for government reimbursement. We cannot authorize reimbursement of HHG transport expenses that would be incurred more than two years after separation.

Mr. Monroy's situation is similar to that in *James P. O'Neil*, B-182993 (Aug. 13, 1975), in which a civilian employee terminated his position with the Federal Government while stationed in the Virgin Islands and, instead of returning to his prior place of residence in the United States, elected to take a non-federal position with the Office of the Governor of the Virgin Islands. Almost two-and-a-half years later, the employee returned to the United States, shipping his HHG home at the same time. In reviewing the employee's claim for reimbursement, the Comptroller General held that it had no authority to provide an extension of separation travel benefits beyond the two-year limit that the then-applicable regulations would allow:

> With regard to an employee's entitlement to travel and transportation benefits back to the continental United States following separation, our Office has adhered to the position that such travel and transportation should be clearly incidental to the termination of the employee's assignment and should commence within a reasonable time after the termination of the assignment in order for return expenses to be reimbursable. . . .
>
> Moreover, since Mr. O'Neil's non-federal employment kept him from returning to the United States for longer than the maximum 2-year period

> prescribed by [applicable regulations], our Office is without authority to make an exception to its provisions, regardless of the extenuating circumstances.

Id.

We sympathize with Mr. Monroy's situation and with the predicament in which his unexpected medical condition has placed him. Nevertheless, Mr. Monroy made a decision when retiring from federal service to remain in Busan and to accept a job there. In making that decision, he forfeited his right to separation travel allowances. It is too late to undo that decision now.

To the extent that Mr. Monroy is asserting that he ought to be able to use return travel entitlements that he earned through his service in the United States Marine Corps, which ended in 2000, our authority to review relocation benefit claims "is limited to [those] involving expenses incurred by federal *civilian* employees." *Peter A. Kosloski*, CBCA 2991-RELO, 12-2 BCA ¶ 35,169, at 172,566-67 (citing 31 U.S.C. § 3702(a)(3) (2012)) (emphasis in original). "Claims involving relocation benefits of uniformed service members are resolved by the Department of Defense's Office of Hearings and Appeals." *Id.* (citing 31 U.S.C. § 3702(a)(1)(A)).

Decision

For the foregoing reasons, the claim is denied.

HAROLD D. LESTER, JR.
Board Judge