



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

December 21, 2017

CBCA 5864-TRAV

In the Matter of STEVEN T. BASEDEN

Steven T. Baseden, Juneau, AK, Claimant.

Marvin D. Rampey, Office of Counsel, Naval Facilities Command Far East, Department of the Navy, FPO Area Pacific, appearing for Department of the Navy.

LESTER, Board Judge.

While on renewal agreement travel (RAT) with his family following a tour of duty overseas, claimant, Steven T. Baseden, notified his employer, the Naval Facilities Command Far East within the Department of the Navy (Navy), that he had accepted a new position with the Army Corps of Engineers in Alaska and would be curtailing the renewal overseas tour of duty with the Navy that he previously had agreed to serve. The Navy subsequently declined his request for RAT reimbursement because he had failed to satisfy at least twelve months of his renewal tour, which the Navy asserted was a condition of his RAT reimbursement. Mr. Baseden challenges the Navy's denial. For the reasons set forth below, we deny Mr. Baseden's claim.

Background

Effective January 22, 2014, Mr. Baseden moved from his permanent residence in Alaska to a new permanent duty station (PDS) with the Navy in Guantanamo Bay, Cuba, for a tour of duty scheduled to end on November 14, 2015. Subsequently, on August 17, 2015, while serving in Guantanamo Bay, Mr. Baseden executed a new transportation agreement

(on DD Form 1617) effecting a new tour of duty in Misawa, Japan, to commence at the conclusion of his Guantanamo Bay tour. On that transportation agreement, his report date for Misawa was identified in block E (titled "Report Date to New or First Permanent Duty Station (PDS)") as November 15, 2015, and another part of the form identified an end date for the Misawa tour of duty as January 21, 2017. The agreement indicated that, after Mr. Baseden had completed fourteen months of his prescribed Misawa tour of duty, he would be eligible for return travel and transportation allowances.

On March 30, 2016, while Mr. Baseden was serving his tour of duty in Misawa, the Navy asked him to extend that overseas tour through January 21, 2019. An attachment to the invitation asked Mr. Baseden to respond by selecting one of three alternatives:

At the expiration of my current tour:

I accept the 24 months additional tour of duty until 21 Jan 2019 and understand I will be eligible for Renewal Agreement Travel (RAT) if I sign a new transportation agreement.*

I request to remain for only ____ months and understand I will not be eligible for RAT.*

I wish to exercise my return rights. Please notify my return rights activity immediately.

*Those agreeing to extend overseas employment past five years should read & sign the consequences of extending overseas tour past five years below.

On March 31, 2016, Mr. Baseden selected the first alternative and signed the requested response, agreeing to an additional tour of duty through January 21, 2019.

On May 5, 2017, Mr. Baseden executed a transportation agreement (on DD Form 1617) for his renewal tour of duty. Like his earlier transportation agreement, block E of the renewal agreement identified November 15, 2015, as the date that Mr. Baseden had first reported to the duty station in Misawa. Even though Mr. Baseden was already eligible for return travel and transportation rights at the end of his tour of duty, having completed his obligations under his earlier agreements, the renewal agreement indicated that Mr. Baseden would be eligible for such allowances once he had completed twenty-four months of "the prescribed tour of duty." In signing the form, Mr. Baseden agreed that he would "remain in Government service for at least 12 months beginning with the effective date of my transfer

or appointment to my new [outside the continental United States (OCONUS)] PDS,” unless separated for reasons beyond his control.¹

By email dated May 16, 2017, a Navy human resources specialist notified Mr. Baseden that, by signing the renewal transportation agreement, he was eligible to undertake RAT to his home of record in Alaska from August 5 to September 2, 2017, but that he would be “required to serve a minimum of 12 months following return to the OCONUS PDS.”

On August 12, 2017, while on RAT in Alaska, Mr. Baseden submitted a request to the Navy that his current tour be curtailed, effective the end of the pay period ending October 14, 2017, to allow him to take a position with the Army Corps of Engineers in Alaska.² Mr. Baseden sought permission to begin his new assignment on September 30, 2017. In his request, Mr. Baseden acknowledged that his extended twenty-four-month Misawa tour of duty began on January 22, 2017, and was not scheduled to end until January 21, 2019. On August 17, 2017, the Navy notified Mr. Baseden that it would grant his request to curtail his OCONUS tour, but informed him that, should he elect to curtail his tour, he would be financially responsible for all costs associated with his RAT.

Following his return from RAT, and prior to his departure for his new job in Alaska, Mr. Baseden submitted a travel voucher through the Navy’s automated Defense Travel System (DTS) seeking reimbursement of his RAT expenses. After DTS rejected and closed the voucher (because of, the Navy tells us, some type of accounting error, rather than by direction of Navy personnel), Mr. Baseden on September 12, 2017, asked the Navy to reopen his DTS voucher and reimburse his RAT expenses. The Navy ultimately determined that Mr.

¹ In block J on the copy of the signed May 5, 2017, transportation agreement that the Navy provided to the Board, the following language is typed, but in a type font different from the rest of the language in block J: “Renewal Tour: 01/22/2017 to 01/21/2019.” The copy of the signed May 5, 2017, transportation agreement that Mr. Baseden provided us does not contain that language, and Mr. Baseden asserts that he never signed an agreement with those renewal tour dates on it. We cannot explain why the parties have different copies of the May 5 agreement. Because it ultimately does not matter whether that language was on Mr. Baseden’s copy of the signed agreement, we will assume, without deciding, that Mr. Baseden’s copy is the correct one.

² The Army Corps of Engineers’ human resources office had already contacted a Navy human resources specialist on August 8, 2017, notifying him that Mr. Baseden had accepted a position in Alaska and seeking the transfer of employment and benefits data.

Baseden was financially responsible for his RAT expenses because he had not performed his renewal tour of duty for at least twelve months and declined to reopen the DTS voucher.

Mr. Baseden submitted his claim to the Board for review on September 26, 2017. He has started his new position with the Army Corps of Engineers in Alaska. The Navy reports that Mr. Baseden served only forty-three days of the minimum twelve months of service in Misawa required under his renewal agreement following his return from RAT. It appears from the record that Mr. Baseden was paid for his return travel and transportation expenses for his move from Misawa to Alaska, but he has not been paid his separate RAT expenses.

Discussion

I. Requirements for RAT Reimbursement

“Once a civilian employee of DOD has satisfactorily completed an agreed period of service at a post of duty [overseas], and has entered into a new written agreement for another period of service at the same or another post of duty [overseas], the employee is eligible for ‘renewal agreement travel’ – a trip home to take leave between the two tours – at Government expense.” *Donald E. Guenther*, GSBICA 14154-TRAV, 98-1 BCA ¶ 29,394, at 146,079-80 (1997). That eligibility is created by statute, which provides as follows:

[A]n agency shall pay . . . the expenses of round-trip travel of an employee, and the transportation of his immediate family, but not household goods, from his post of duty outside the continental United States, Alaska, and Hawaii to the place of his actual residence at the time of appointment or transfer to the post of duty [or an approved alternate location], after he has satisfactorily completed an agreed period of service outside the continental United States, Alaska, and Hawaii and is returning to his actual place of residence to take leave before serving another tour of duty at the same or another post of duty outside the continental United States, Alaska, and Hawaii under a new written agreement made before departing from the post of duty.

5 U.S.C. § 5728(a) (2012); *see* Joint Travel Regulations (JTR) 5950-A (an employee is eligible for RAT if he or she is “returning home between OCONUS tours of duty” and is “serving OCONUS tours of duty”).

“The statutory requirements for RAT . . . include the necessity of the agency employee having executed a new written agreement for his new [overseas] tour of duty ‘before departing from the post of duty’ for RAT.” *Russell S. Chiles*, CBCA 4188-TRAV, 15-1 BCA ¶ 35,953, at 175,691. The Federal Travel Regulation (FTR) implements the statutory

requirements by indicating that an employee is entitled to RAT if (1) he or she has satisfactorily completed an overseas tour of duty for the time period required by the employee's service agreement and (2) has "signed a new service agreement to remain at [his or her] overseas post or to transfer to another overseas post of duty." 41 CFR 302-3.212 (2016). The Department of Defense's JTR in effect at the time of Mr. Baseden's travel further implement that requirement as follows:

Eligibility Requirements for All OCONUS Areas

1. Eligibility. An employee must meet the requirements in par. 5950-B2 to be eligible for the allowances in par. 5950-A.
2. Requirements. Prior to departure from the OCONUS PDS an employee must have:
 - a. Satisfactorily completed the prescribed tour of duty (par. 5840-C and App. Q, par. C for prescribed tours of duty), and
 - b. Entered into a new written service agreement for another tour of duty at an OCONUS PDS; (the new service agreement covers costs incident to travel to the employee's actual residence or alternate location [in accordance with] pars. 5950-N1, 5950-N2, and 5950-N3 and return and any additional cost paid by the [Government] as a result of the employee's transfer to another OCONUS PDS at the time of the tour RAT)

JTR 5950-B. "The requirement that the employee sign a new written agreement to serve another [overseas] tour prior to leaving his post of duty at the conclusion of his first tour . . . is a precondition to entitlement which is expressly set out in the text of the statute itself." *Julio Gagot-Mangual*, GSBICA 16117-TRAV, 04-1 BCA ¶ 32,467, at 160,587 (2003).

If an employee serving under a renewal agreement fails to complete the required twelve-month period of service after taking RAT, the employee loses his or her entitlement to reimbursement for those RAT expenses. *Daryl J. Steffan*, CBCA 3821-TRAV, 14-1 BCA ¶ 35,734, at 174,903; 41 CFR 302-3.223; JTR 5856-C.1.a.

II. Mr. Baseden's Arguments in Support of RAT Reimbursement

Mr. Baseden notified the Navy while he was on RAT that he would be leaving his Misawa post very soon after returning from RAT and would not be completing his post-RAT

tour of duty in Misawa, but would be accepting a new government position with a PDS in Alaska. On its face, it would appear that, by failing to complete at least twelve months of his overseas renewal tour, Mr. Baseden lost his entitlement to RAT expenses. *See Daryl J. Steffan*, 14-1 BCA at 174,903. Mr. Baseden makes several arguments, though, in support of his right to RAT reimbursement in the circumstances here, which we address below:

First, Mr. Baseden argues that, under the express language of the renewal transportation agreement that he signed on May 5, 2017, he was entitled to renewal benefits (including RAT) if he served twelve months from “the effective date of [his] transfer . . . to [his] new OCONUS PDS,” which was identified in block E of the agreement as November 15, 2015 (the date that he first arrived for his initial tour in Misawa). That twelve-month period was satisfied by November 15, 2016, he says, almost six months before he signed the renewal agreement.

We have to agree with Mr. Baseden that nothing in the express language of his copy of the transportation agreement identifies any obligation requiring him to serve an additional twelve months after his return from RAT or, for that matter, for any period other than the one running from his November 15, 2015, initial tour start date. On its face, the DD Form 1617 that Mr. Baseden signed purports to require him to complete twenty-four months of service from the initial tour start date to be eligible for return travel and transportation allowances, even though his completion of his initial overseas tour of duty had already created that benefit entitlement. *See* 41 CFR 302-2.19 (“service agreements which are already in effect cannot be voided by subsequent services agreements”). Even were we to consider the reference to the “Renewal Tour: 01/22/2017 to 01/21/2019” language that is typed in at the end of the Navy’s, but not Mr. Baseden’s, copy of the May 5, 2017, renewal agreement, the express language of the actual DD Form 1617 does not appear to impose any time commitment obligations upon the employee other than those running from the date of the initial appointment. Similarly, language requiring Mr. Baseden to “remain in Government service for at least 12 months beginning with the effective date of my transfer or appointment to my new OCONUS PDS” can only refer to his arrival in Misawa on November 15, 2015. It says nothing about a twelve-month commitment running from his return to his existing OCONUS PDS after RAT. Although we recognize that the standard DD Form 1617 is used in several different situations, only one of which is renewal OCONUS tours of duty, it is unfortunate that the standard form does not correctly explain to the employee signing the agreement what obligations he or she will have to fulfill if he or she hopes to obtain RAT reimbursement.³

³ Some DoD components may use a separate renewal service agreement explaining
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The absence of the correct language in the renewal agreement does not, however, somehow entitle Mr. Baseden to RAT reimbursement. In fact, its absence precludes entitlement. Pursuant to the FTR, to be eligible for RAT, the employee must have signed a service agreement obligating himself or herself to continue his or her overseas tour of duty for “a period of not less than 12 months from the date of return [from RAT] to the same or different overseas official station.” 41 CFR 302-2.14(d).⁴ The JTR supplements the FTR provision by stating that the “minimum period[] of service” to which the employee must agree to serve to be entitled to RAT reimbursement is an additional “tour of duty not less than 12 months from the return date to the same/different OCONUS PDS,” although “[a] standard tour of duty is . . . 24 months under a renewal agreement.” JTR 5840-B.5, -C.1.b. If the employee does not sign an agreement creating at least a twelve-month obligation, running from the employee’s return from RAT, the Government is not financially responsible for the employee’s RAT expenses. 41 CFR 302-2.18; JTR 5820-B, -D; *see* 41 CFR 302-3.514(b) (agency cannot reimburse an employee for RAT unless “[t]he employee has agreed to serve another OCONUS tour of duty at the same or different [OCONUS] duty station”).

The situation here was addressed in *Ralph J. Mulder*, GSBCA 14562-TRAV, 99-1 BCA ¶ 30,202 (1998), in which another employee who had signed the DD Form 1617 to support a renewal tour of duty attempted to obtain RAT reimbursement despite having sought a transfer to a position in the United States less than twelve months into his renewal OCONUS tour of duty:

Claimant is correct that the [DD Form 1617] transportation agreement he signed does not contain an *express* commitment to complete the new tour of duty. Nevertheless, if such a commitment is not at least implicit in the agreement, then the statutory requirement for an agreement to serve for another specified period, prior to departing on return agreement travel, has not been met. In the absence of such an agreement, no employee is entitled, under the

³(...continued)

the employee’s renewal tour obligations in addition to DD Form 1617 or may include language at the end of the form explaining those obligations, but the Navy did not do so here.

⁴ We have recognized an exception to the written agreement requirement “where the Government fails to offer a new agreement or refuses to negotiate one with the employee,” so long as the employee has made clear his commitment to an overseas renewal tour of at least twelve months. *Russell S. Chiles*, 15-1 BCA at 175,692 (quoting *Jorge J. Martinez*, CBCA 2265-RELO, 11-1 BCA ¶ 34,704, at 170,899). That exception does not apply here, given that Mr. Baseden failed to honor any twelve-month renewal tour commitment.

law, to round trip travel between consecutive tours. Thus, in his own case, by reading this commitment out of the transportation agreement he signed, [the claimant] has, in effect, disqualified himself from receiving the return agreement travel benefit. On that ground alone, his claim must be denied.

Id. at 147,445.⁵

Second, Mr. Baseden asserts that he was actually due RAT after he completed his twenty-two month tour of duty in Guantanamo Bay and before he transferred to Misawa effective November 15, 2015, but did not receive it. He therefore argues his August 2015 RAT should be viewed as a deferral of his entitlement to post-Guantanamo/pre-Misawa RAT. We recognize that, once earned, RAT is an entitlement that an agency does not have discretion to withhold. *Russell S. Chiles*, 15-1 BCA at 175,692. Nevertheless, “RAT must be used *between* consecutive periods of continuous OCONUS employment,” and “[e]ntitlement to [it] is not cumulative from one period of service to another if not used.” JTR 5950-H (emphasis added); *see George E. Lingle*, GSBCA 13946-TRAV, 97-2 BCA ¶ 29,292, at 145,720. The purpose of RAT is “to provide employees with a trip home to the United States during a break between tours of duty at overseas posts,” with the goal of encouraging retention of employees for overseas work, and that “purpose is not met if not used by the employee at or close to the time of the actual break between successive tours of duty.” *Clyde Huyck*, B-259632 (June 12, 1995). Although there may be times when an agency can allow an employee to postpone his or her RAT for some short period of time to accommodate agency or employee needs, *see* JTR 5950-F2, the agency cannot allow an employee to delay RAT until after his or her entire “renewal” tour is finished. *See* JTR 5950-F (identifying limitations on RAT deferrals).⁶ The RAT expenses at issue here were plainly tied to Mr. Baseden’s commitment to satisfy a twelve-month renewal OCONUS tour of duty following his initial Misawa tour, a commitment that he did not satisfy.

⁵ In the circumstances here, it appears that Mr. Baseden actually agreed to a post-RAT renewal tour outside the context of the transportation agreement. On March 31, 2016, Mr. Baseden signed the response to the Navy’s invitation to extend his Misawa tour of duty for twenty-four months, through and including January 21, 2019. The Navy’s offer made clear that Mr. Baseden would be eligible for RAT if he signed a transportation agreement for the extended twenty-four-month tour, but that, if he declined to extend his tour or decided to extend his tour for a lesser period, he would not be eligible for RAT.

⁶ Further, nothing in the record here suggests that, if Mr. Baseden was entitled to post-Guantanamo RAT, he ever made a request for it or for a postponement of it. In any event, the agency would not have been obligated to approve a postponement. JTR 5950-F; *see* JTR 7065-F.2.c (Nov. 2015).

Third, Mr. Baseden argues that, under his transportation agreement, he automatically qualifies for RAT reimbursement if he completes twelve months of government service, without regard to where that service is performed. Because he still works for the Federal Government, he asserts, he is satisfying his twelve-month commitment, even though he is not doing it in Misawa. We disagree. By statute, RAT entitlement requires the employee, after completing an overseas tour of duty, to commit to “another tour of duty at the same or another post of duty outside the continental United States, Alaska, and Hawaii.” 5 U.S.C. § 5728(a). Similarly, the FTR defines an “overseas tour of duty” as “an assignment to a post of duty outside the continental United States, Alaska or Hawaii.” 41 CFR 302-3.210; *see Scott P. Mendenhall*, CBCA 3451-RELO, 14-1 BCA ¶ 35,580, at 174,358 (RAT requires agreement to “another overseas tour of duty”). An employee who does not fulfill at least twelve months of his or her renewal tour at the overseas duty station is not entitled to RAT. *See Daryl J. Steffan*, 14-1 BCA at 174,903 (denying RAT to employee who left overseas position during twelve-month renewal tour of duty to take new position with the Government in Hawaii); *Mulder*, 99-1 BCA at 149,444 (“It is not enough that the employee agree to remain in Government service for twelve months,” but must fulfill that commitment at an overseas duty station).

Fourth, Mr. Baseden asserts that, because his new duty station is in Alaska, he is entitled to his RAT expenses because “Alaska is an OCONUS location” and that the relevant regulations require that the renewal tour of duty be in the same or another OCONUS location as the initial tour of duty. Claimant’s Reply at 2. Yet, under the FTR, an employee becomes entitled to RAT only if he or she completes “an overseas assignment” and agrees “to remain at [the] overseas post or to transfer to another overseas post of duty.” 41 CFR 302-3.212(a), (b). As previously mentioned, the FTR defines an “overseas” post as one “outside the continental United States, Alaska or Hawaii.” *Id.* 302-3.210. In certain circumstances following a governmental determination of necessity, agencies may provide RAT to employees assigned, appointed, or transferred to Alaska or Hawaii who commit to a renewal tour there. *See* 5 U.S.C. § 5728(c); 41 CFR 302-3.212(c); JTR 5950-D. Nothing in the statute or the FTR, though, permits an employee who completes an overseas tour of duty to obtain RAT by committing to transfer to a different government position in Alaska, Hawaii, or elsewhere in the continental United States. RAT is available following an overseas tour of duty only by a commitment to a minimum period of time in a second overseas tour of duty.

We recognize that the JTR states that, to obtain RAT, the employee must agree to “another tour of duty at an OCONUS PDS,” JTR 5950-B.2.b, and that the JTR considers Alaska an OCONUS duty station. JTR app. Q. The FTR makes clear, though, that an employee serving an initial tour of duty overseas qualifies for RAT only by agreeing to another *overseas* tour of duty. 41 CFR 302-3.212. “It is well established that when a JTR provision conflicts with the FTR, the FTR will be followed because the JTR ‘does not have

the force of law and cannot alter an FTR determination.” *Scott M. Torrice*, CBCA 2431-TRAV, 11-2 BCA ¶ 34,839, at 171,386 (quoting *Frank J. Salber*, GSBCA 16836-RELO, 06-2 BCA ¶ 33,330, at 165,286). Although the Board has sometimes used the terms “OCONUS” and “overseas” interchangeably in past decisions when describing RAT renewal tour obligations, it has done so only for convenience when the distinction made no difference, and that past usage does not alter the actual FTR provision or statutory requirements. In the circumstances here, to obtain RAT reimbursement, Mr. Baseden had to complete at least twelve months of his renewal tour in an *overseas* tour of duty.

Fifth, Mr. Baseden claims that the Navy’s human resources specialist assured him before he went on RAT that, even if he left his position in Japan early to take a job in Alaska, he would still receive RAT reimbursement. “The Government is not bound by the erroneous advice of its officials, even when the employee has relied on this advice to his detriment.” *Flordeliza Velasco-Walden*, CBCA 740-RELO, 07-2 BCA ¶ 33,634, at 166,580 (quoting *Lee A. Gardner*, GSBCA 15404-RELO, 01-2 BCA ¶ 31,456, at 155,325-26). “[E]ven had [the claimant] been provided with incorrect information, . . . this would not change the fact that the regulations limit entitlement to RAT. Once [the claimant] failed to complete the required one year of service after completing RAT, he lost the entitlement to the RAT benefit” *Daryl J. Steffan*, 14-1 BCA at 174,903.

Decision

For the foregoing reasons, Mr. Baseden’s claim is denied.

HAROLD D. LESTER, JR.
Board Judge