UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

September 7, 2017

CBCA 5750-RELO

In the Matter of DANIEL V. MOREN

Lawrence Berger, Glen Cove, NY, appearing for Claimant.

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

SHERIDAN, Board Judge.

Claimant, Daniel V. Moren, a retired employee of the Drug Enforcement Administration (DEA or the agency), contests a $110,064.50 debt assessed by the agency and incurred as a result of claimant's violation of a service agreement. The agency denied claimant's request for financial leniency, based on 5 U.S.C. § 5724 (2012) and the Federal Travel Regulation (FTR), which allows reimbursement of all relocation expenses paid by the Government when a service agreement is violated. While claimant acknowledges that his voluntary retirement allows the Government to recover certain relocation expenses, claimant asks the Board to find that the $109,200 "home acquisition fee" is not a reimbursable debt under the service agreement. For the reasons stated below, the Board denies Mr. Moren's request.

Background

The DEA selected claimant for reassignment from his office in Minneapolis, Minnesota, to an office in Seattle, Washington. As part of his reassignment, claimant signed a service agreement in which the Government agreed to pay claimant's relocation expenses, and in consideration of the benefits provided, claimant agreed to remain in government service for at least twelve months. Under the FTR and agreement terms, any failure to fulfill the service obligation, including voluntary retirement, results in an indebtedness to the Government for any relocation expenses paid by the Government through the agreement.

After claimant signed the service agreement on December 2, 2015, his transfer became effective on January 24, 2016, and his service obligation under the agreement extended until January 23, 2017. The Government incurred $864.50 in en route expenses and $109,200 in home sale expenses as a result of claimant's relocation. On June 11, 2016, with seven months remaining in the agreement, claimant voluntarily retired from government service.

Prior to retiring, claimant referenced his travel authorization forms from his relocation. Specifically, claimant says he reviewed DEA Form 132a that authorized expenses of $84,150 for the sale of his residence, which he understood to be the "maximum allowable charges that could be incurred by the government" in the sale of his home. Claimant alleges that he relied on this information in deciding whether to retire.

Additionally, claimant contacted a government official about potential repayment obligations as a result of failing to fulfill his service obligation. In a May 25, 2016, email message, a DEA transportation management unit chief advised claimant that the en route expenses paid by the Government were just under $900. That official also advised claimant that the relocation service provider had not yet sent an invoice for the home sale, but that "preliminary numbers on PCS [permanent change of station] payback" for the home sale expenses were approximately $60,000.

The home sale expense estimate provided by the unit chief was calculated under the assumption that the sale of claimant's residence would be an amended sale, with an expense rate of 10.75% of the home sale price.[1] Claimant, however, accepted a guaranteed buyout on his home sale on May 18, 2016, unbeknownst to the official providing the May 25 estimate of claimant's obligation. Brookfield Relocation, Inc., the relocation services company, sent the invoice to DEA on June 3, 2016. The amount billed represents a 22.75% fee, calculated pursuant to the relocation services company's contract with the DEA, for acquiring claimant's home on May 17, 2016, under a guaranteed buyout for $480,000.

The DEA advised claimant on June 30, 2016, that he owed a debt to the DEA in the amount of $110,064.50 for his failure to honor the service agreement. The debt reflected

---

[1] Pursuant to the FTR, the relocation services company had different expense rates for the two options available to employees under the home sale program, the amended sale or guaranteed buyout. For an amended sale, occurring when a relocated employee finds a buyer for his previous home, the relocation services company charges the Government an expense rate of 10.75% of the home sale price. For the guaranteed buyout, occurring when the relocation services company purchases the home, there is a higher expense rate of 22.75% of the home sale price.

actual expenses paid by the Government to relocate claimant. In addition to the en route expense, the debt includes a home acquisition fee of $109,200 that the Government incurred as an expense under the guaranteed buyout.

On July 6, 2016, claimant appealed the debt to the DEA Chief Financial Officer, seeking leniency based on his reliance on the DEA form and DEA's estimate. DEA denied the appeal on February 28, 2017, based on statute and policy that require claimant to fulfill a service agreement or repay relocation expenses. On May 17, 2017, claimant filed an appeal with the Board alleging that the home acquisition fee is not a reimbursable debt authorized by 5 U.S.C. § 5724, and, thus, the service agreement does not require repayment.

Discussion

Pursuant to 5 U.S.C. § 5724, the Government is authorized to pay the travel and transportation expenses of an employee transferred from one official station to another in the interest of the Government. Specifically, the statute provides:

> An agency may pay travel and transportation expenses . . . and other relocation allowances . . . only after the employee agrees in writing to remain in the Government service for 12 months after his transfer, unless separated for reasons beyond his control that are acceptable to the agency concerned. If the employee violates the agreement, the money spent by the Government for the expenses and allowances is recoverable from the employee as a debt due the Government.

5 U.S.C. § 5724(i). As implemented in the FTR, the agency's authorization to pay relocation expenses is conditioned on the employee signing a service agreement to remain in service for at least twelve months. 41 CFR 302-2.13, .14, .101. Claimant does not appear to dispute that his voluntary retirement violated his twelve month service commitment under the agreement.

An employee who violates a service agreement "will have incurred a debt due to the Government and . . . must reimburse all costs that [the] agency has paid towards [the employee's] relocation expenses." 41 CFR 302-2.15. While acknowledging that certain expenses must be repaid, claimant disputes the repayment requirement, under 5 U.S.C. § 5724, for one specific expense, the home acquisition fee.

Claimant alleges that the benefit in issue is not a valid repayable debt under his service agreement with the Government. Specifically, claimant states that "section 5724 does not appear to require repayment of a 'Home Sale Acquisition Fee,'" and the acquisition fee cannot be equated "to the 'arranging' for the purchase of claimant's residence which appears

to be limited to paying a fee to an entity for acting as an intermediary between a seller and a third-party buyer." By positing that he does not need to repay the home acquisition fee, claimant seeks to retain a portion of the benefits that the agency provided for his relocation. We conclude that claimant is not entitled to retain any of the reimbursed relocation expenses including the home sale acquisition fee.

A claim involving a review of the debt incurred from failure to fulfill a service agreement is equivalent to seeking to retain a portion of funds reimbursed to the employee by the Government. *Bradley Hebing*, CBCA 5052-RELO, 17-1 BCA ¶ 36,615, at 178,337 (2016). As with all claims for relocation benefits, "[c]laimant has the burden of proof and must establish all elements of [his] claim." *Amy Andress*, CBCA 757-TRAV, 07-2 BCA ¶ 33,636, at 166,585 (citing *Gary Twedt*, GSBCA 16905-RELO, 06-2 BCA ¶ 33,433). Thus, Mr. Moren must demonstrate the debt does not require repayment to the Government.

Here, the DEA contracted with Brookfield Relocation, Inc., to provide relocation services for transferred employees, including a home sale program. Therefore, the home sale expense invoiced to the Government originates from a private relocation services company under contract with the Government. An agency is authorized to assist transferred employees with relocating by entering into a contract with private companies that provide relocation services, including home sale programs. 5 U.S.C. § 5724c; 41 CFR 302-12.101, .105; *Donald L. Boyle*, GSBCA 15080-RELO, 00-1 BCA ¶ 30,653, at 151,348 (1999) ("[S]ervices may include arranging for the purchase of the employees' old residences."). Home sale programs serve as a relocation benefit by assisting with the sale of an employee's residence prior to relocation. *Mark R. Tayler*, GSBCA 15621-RELO, 02-1 BCA ¶ 31,816, at 157,239 ("[S]ervices include arranging for the purchase by the relocation services contractor of a transferred employee's residence at the old duty station under a home sales program."). Thus, by acquiring claimant's home through the home sale program, Brookfield Relocation, Inc. provided a relocation benefit to Mr. Moren at the expense of and through contract with the Government. Mr. Moran specifically requested the home sales program and the benefits that the program provided to him.

An employee is responsible for repaying any relocation expenses paid by the agency if he fails to complete his [or her] service agreement. 41 CFR 302-2.15. Claimant's belief that the home sale acquisition fee does not constitute a relocation expense is misguided. While 5 U.S.C. § 5724 and its implementing provisions do not explicitly state that a home sale acquisition fee is reimbursable, the FTR provisions clearly state that any expense incurred in relocating an employee through a relocation service company is reimbursable. Therefore, a home sale acquisition fee is an expense that is encompassed by the FTR provisions.

In addition to the FTR provisions, DEA policy articulated in the DEA PCS Domestic Relocation Handbook addresses service agreements and repayment conditions. The handbook provides that if an employee fails "to fulfill the terms of the Service Agreement(s) by . . . voluntarily retiring . . . [the employee] will be required to repay the United States Government all costs the DEA has paid towards [the employee's] relocation expenses." The terms in the handbook clearly specify that all relocation expenses must be repaid, rather than just certain expenses.

Separately, claimant alleges that his decision to retire was based on preliminary expense estimates provided by a government employee. The government employee provided the estimate believing that the sale of claimant's residence would be an amended sale, which would have had a lower fee (10.75%) than a guaranteed sale, which has a higher fee (22.75%). While claimant's home sale was ultimately a guaranteed sale with a higher expense, reliance on incorrect information from a government employee or form does not provide a basis for waiving the debt. *Lisa A. Lindman*, CBCA 2893-RELO, 13 BCA ¶ 35,230, at 172,842 ("[D]etrimental reliance on erroneous advice from a government official will not confer on a claimant entitlement to recovery, where there is no authority under statute and regulation for the relief being sought."); *Flordeliza Velasco-Walden*, CBCA 740-RELO, 07-2 BCA ¶ 33,634, at 166,580 ("The Government is not bound by the erroneous advice of its officials even when the employee has relied on this advice to his detriment." (quoting *Lee A. Gardner*, GSBCA 15404-RELO, 01-2 BCA ¶ 31,456)); *Kelvin R. Martin*, GSBCA 14879-RELO, 99-2 BCA ¶ 30,422, at 150,382 ("[I]t is well established that erroneous advice provided by Government officials cannot, in and of itself, provide a basis for reimbursement where no independent authority for such reimbursement exists."). Thus, claimant's reliance on erroneous advice from a government employee is not sufficient to find the debt is not reimbursable to the Government.

Claimant further alleges that he relied on an authorized travel expenses form in his decision to retire. Claimant states that he believed that the authorized amount listed on the form, $84,150, would "represent maximum allowable charges that could be incurred by the Government on the sale of his residence." An expense form, however, is not sufficient to overcome statutory provisions governing service agreements. *Hebing*, 17-1 BCA at 178,338 (citing *Bruce Bryant*, CBCA 901-RELO, 08-1 BCA ¶ 33,737 (2007) ("[I]n assessing matters of erroneous advice, agency policy, whether oral or misstated in a manual, cannot be enforced if it conflicts with a statute or regulation.")). Thus, the Board has no authority to provide relief based on claimant's reliance on inaccurate authorization forms.

Decision

The applicable statute and regulations mandate that an employee who fails to fulfill his or her service obligation under a service agreement must reimburse all costs that have been paid by the agency for relocation expenses. For the foregoing reasons, the claim is denied.

PATRICIA J. SHERIDAN
Board Judge