



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

August 7, 2017

CBCA 5703-RELO

In the Matter of DAVID G. KULINSKI

David G. Kulinski, Augusta, GA, Claimant.

Gary J. McWilson, Chief, PCS Travel Section, Department of Veterans Affairs, Austin, TX, appearing for Department of Veterans Affairs.

VERGILIO, Board Judge.

The claimant signed a service agreement for a relocation within the continental United States. The claimant permitted a Government-hired mover to pack, transport, and store his goods. The claimant opted not to relocate, maintaining that the reasons were beyond his control. The claimant contends that the agency improperly and erroneously determined that the claimant is liable for the move-associated costs. The agency's determination is consistent with statute and regulation.

As an employee of the Department of Veterans Affairs (agency), the claimant, David G. Kulinski, on November 14, 2016, accepted a position that entailed a relocation within the continental United States. On December 9, 2016, the claimant signed a service agreement in which he agreed to remain in Government service for a period of twelve months following the date of transfer. The agreement provided that if for any reason not acceptable to the agency he did not complete the transfer, thereby violating the terms of the agreement, any money expended by the United States related thereto, including expenses of transportation and/or storage of household goods, would be considered as a debt due to the Government. With his signature, the claimant agreed to pay in full any such amount found due as directed by the agency. After the Government incurred expenses to pack and move household goods and while the goods were in temporary storage, the claimant opted not to transfer. The agency has issued a bill of collection to recoup those expenses. The claimant asks the Board

to review the legitimacy of the assigned debt and to make a determination as to whether the debt has been properly assigned to the claimant.

Statute permits the agency to expend funds for the expenses of packing, crating, transporting, temporarily storing, and unpacking an employee's household goods associated with a relocation in the interest of the Government. 5 U.S.C. § 5724(a) (2012). Implementing regulations (the Federal Travel Regulation (FTR)) require the agency to pay or reimburse expenses for the transportation and temporary storage of household goods. 41 CFR 302-3.101 tbl. A (2016) (FTR 302-3.101 tbl. A). The agency authorized the actual expense method for claimant's household goods, FTR 302-7.200, such that the agency made all necessary arrangements for the movement and storage of the goods. The agency arranged for a mover; the claimant permitted household goods to be packed, moved, and temporarily stored. Thereafter, with goods in temporary storage, the claimant opted not to relocate. The claimant asserts that he opted not to relocate for reasons beyond his control, as he contends that he made this determination because of what he perceived to be a hostile work environment at the new duty station. The claimant also asserts that he would have opted to perform a self move, if aware of the option, and that the packing, movement, and temporary storage of his goods was improper because no authorized person from the agency had signed the related travel authorization at the time of packing and moving. The claimant points out that the agency signed the travel authorization after he declined to move.

The debt is legitimate. The claimant did not transfer. The claimant cannot establish entitlement to having the agency pay for the expenses of the move when no transfer occurred; statute authorizes the expenditure of funds for a transfer but not for an employee who fails to transfer. Implementing regulations are explicit regarding the obligations of the employee but permit an agency to exercise discretion and release an employee from the agreement and waive any indebtedness.

If an employee does not fulfill the terms of the service agreement, the employee is indebted to the Government for all relocation expenses that have been reimbursed to the employee or that have been paid directly by the Government. However, if the reasons for not fulfilling the terms of the service agreement are beyond the employee's control and acceptable to the agency, you may release the employee from the service agreement and waive any indebtedness.

FTR 302-3.506. The first sentence of this provision establishes the claimant's indebtedness. The second sentence leaves it to the agency to waive the indebtedness. The claimant has not established that the reasons for not fulfilling the terms of the agreement were beyond his control, and the agency has determined that the reasons are not acceptable to it. The agency

considered the appropriate facts and factors. *Thomas M. Stan*, GSBCA 1667-RELO, 05-2 BCA ¶ 33,063.

The claimant references *Melinda K. Kitchens*, GSBCA 16639-RELO, 05-2 BCA ¶ 33,062, in which the board observed that the agency had not recognized its ability to exercise its discretion when the claimant did not fulfill the terms of the relocation agreement—the claimant transferred, found the conditions unjust and unacceptable, and resigned, while the agency offered no meaningful alternative to resigning from federal service. The material facts in this case are distinct. This claimant did not transfer. The agency was aware of its ability to exercise its discretion, and concluded that the claimant’s reasons for not fulfilling the terms of the transfer agreement were not acceptable to the agency. The agency was aware of the facts. Its determination was not arbitrary or capricious and does not reflect an abuse of discretion.

The claimant seeks to be absolved of liability, maintaining that the moving expenses were improperly incurred because household goods were packed, transferred, and placed in temporary storage before the agency had signed an authorization. The travel authorization was signed, thereby ratifying the obligation of funds. The claimant permitted goods to be packed and moved out of his home, and placed into temporary storage. Thus, although the claimant may have preferred a do-it-yourself move, he permitted the move to go forward with agency-hired movers. The claimant was aware that expenses were being incurred and knew or should have know of his liability if he failed either to complete the transfer or to fulfill the terms of his service agreement. Even taking these assertions by the claimant as true, his position is not helped.

Because the claimant failed to transfer, the agency has properly deemed the claimant to be indebted to the Government for expenses incurred in association with the move. The claimant has not demonstrated that the agency must eliminate the debt in whole or in part.

JOSEPH A. VERGILIO
Board Judge