



UNITED STATES  
CIVILIAN BOARD OF CONTRACT APPEALS

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March 12, 2018

CBCA 5824-RELO

In the Matter of RICHARD GONG

Richard Gong, Houston, TX, Claimant.

Cassandra Maximous and Geoffrey Harriman, Office of the Principal Legal Advisor, Immigration and Customs Enforcement, Department of Homeland Security, Washington, DC, appearing for Department of Homeland Security.

**GOODMAN**, Board Judge.

Claimant, Richard Gong, is an employee of the Department of Homeland Security, Immigration and Customs Enforcement (the agency). We previously dismissed claimant's request for review of what he characterized as the agency's denial of his claim for reimbursement of relocation expenses, as the agency had not adjudicated the claim. *Richard Gong*, CBCA 5598-RELO, 17-1 BCA ¶ 36,759. Claimant thereafter submitted his claim to the agency, the agency denied the claim, and he now seeks review of the agency's denial. We grant his claim in part.

Factual Background

In 2010, claimant received permanent change of station (PCS) orders to transfer from Waco, Texas, to Guam pursuant to a twelve-month service agreement. The service agreement contained conditions pertaining to "domestic" and "foreign transfers," but did not specifically designate whether claimant's transfer was considered domestic or foreign. What was clear was that claimant agreed to remain in government service in Guam for twelve months. The service agreement reads in relevant part:

New Duty Station: Hagatna, Guam<sup>[1]</sup> . . .

For Domestic Transfers Only . . .

1. In connection with my proposed transfer at government expense to the station listed above, I hereby agree to remain in Government service for twelve months following this transfer unless separated for reasons beyond my control . . .

For Foreign<sup>[2]</sup> Transfers Only . . .

I understand and agree that:

- a. I will remain in the Government Service at the overseas<sup>[3]</sup> post of duty<sup>[4]</sup> to which I am assigned or reassigned for a minimum period of twelve (12) months, beginning with the date of my arrival at my overseas permanent duty station. The period of service specified above is for the sole purpose of

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<sup>1</sup> According to the regulations cited in this decision, Guam is a non-foreign area, is not overseas, but is outside the Continental United States (OCONUS).

<sup>2</sup> The Federal Travel Regulation (FTR) defines the following terms:

*Continental United States (CONUS)*—the 48 contiguous states and the District of Columbia.

*Foreign Area . . .* —Any area, including the Trust Territories of the Pacific Islands, situated both outside CONUS and the non-foreign areas.

*Non-foreign area*—the States of Alaska and Hawaii, the Commonwealths of Puerto Rico, Guam, and the Northern Mariana Islands, and the territories and possessions of the United States (excludes the Trust Territories of the Pacific Islands).

41 CFR 300-3.1 (2010).

<sup>3</sup> *Overseas* means outside the continental United States, but does not include Alaska, Guam, Hawaii, the Isthmus of Panama, Puerto Rico, or the Virgin Islands. 5 CFR 210.102(b)(9) (2010).

<sup>4</sup> A post of duty is “an official station outside CONUS.” 41 CFR 300-3.1.

establishing my eligibility for travel and transportation at Government expense. . . .

c. I will not be eligible for return travel and transportation at Government expense for myself, my dependents, or my household effects, to my place of residence . . . until I have completed the 12-month period of service in this agreement unless the reason for earlier return is beyond my control . . . .

Claimant fulfilled his twelve-month service agreement. While employed on Guam, he applied for several agency positions located in CONUS. When he was not selected for any positions to which he applied, he filed multiple Equal Employment Opportunity (EEO) claims alleging discrimination. These claims were settled and claimant and the agency entered into an EEO settlement agreement (EEO settlement) dated December 17, 2015.

Pursuant to the EEO settlement, the agency agreed to select claimant for one of the positions for which he had previously applied, located in Washington, D.C., and to thereafter transfer him within thirty days to Houston, Texas. The EEO settlement stated that “[t]his agreement constitutes the complete understanding between the [claimant] and the Agency. No other promises or agreements will be binding unless signed by both parties.” The EEO settlement did not state that the Government would pay relocation expenses. The job vacancy announcement for the position to which claimant was appointed (and the other vacancy announcements to which claimant responded) stated: “Relocation expenses will not be paid.”

Claimant paid his moving expenses from Guam to his new duty station, and thereafter claimed entitlement to reimbursement for various moving expenses allegedly incurred. After claimant’s previous request for review was dismissed by the Board, he submitted his claim to the agency for adjudication, seeking reimbursement for moving expenses totaling \$13,675.42,<sup>5</sup> as follows.

1. Shipping supplies: \$54.95
2. U.S. Postal Service—shipment of household goods: \$5468.41
3. Packaging and shipping container for bicycle: \$18.00
4. Shipping private owned vehicle (POV): \$2371.18
5. U.S. Customs Duty Inspection Clearance fee: \$374.86

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<sup>5</sup> The total of the costs listed is actually \$13,675.72. As detailed in this decision, there are several discrepancies between the amount of certain items claimed and the totals of receipts submitted.

6. Vehicle rental in Guam after POV shipped: \$264.00
7. One night stay in hotel prior to flight departure: \$144.30
8. Airline transportation from Guam to Houston: Claimant used frequent flyer air miles.<sup>[6]</sup>
9. Rental vehicle in Texas while awaiting privately owned vehicle to arrive from Long Beach, CA to Houston, TX: \$935.02
10. Dispatch & shipment of POV by transport carrier service: \$600.00
11. Losses of household goods [HHG] that could not be shipped due to size and weight: \$3445.00<sup>[7]</sup>

By letter dated August 3, 2017, the agency denied the claim, after which claimant filed this request for review.

### Discussion

The agency has denied claimant's entitlement to reimbursement of return travel benefits after completion of his assignment OCONUS when he was subsequently transferred to an assignment in CONUS. The agency supports its denial on several bases—That there is no statutory or regulatory basis for reimbursement of the costs claimed; that claimant's transfer to CONUS was not in the interest of the Government; that the vacancy announcement for the position to which he was transferred stated that relocation costs would not be paid; and that claimant's service agreement did not allow for reimbursement for the costs claimed, as his initial transfer to Guam was a domestic and not a foreign transfer. The agency's positions are for the most part incorrect, and claimant is entitled to some of the costs he incurred.

### Claimant's Statutory Rights Accrued When He Completed His Service Agreement

With regard to transfers between CONUS and OCONUS, the relevant statute provides:

When an employee transfers to a post of duty outside the continental United States, his expenses of travel and transportation to and from the post shall be

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<sup>6</sup> Claimant states: "Airline expense not included in calculation. Agency can either reimburse Claimant 65,000 miles plus taxes or actual ticket cost to be included in relocation expenses."

<sup>7</sup> This amount is claimant's alleged valuation for a plasma TV, two couches, a queen mattress and platform bed, and a barbecue grill that were apparently abandoned in Guam.

allowed to the same extent and with the same limitations prescribed for a new appointee under section 5722 of this title.

5 U.S.C. § 5724(d) (2012).

Accordingly, claimant's right to reimbursement of transportation expenses for himself and his HHG and personal effects is governed by 5 U.S.C. § 5722, which states:

(a) Under regulations prescribed under section 5738 of this title and subject to subsections (b) and (c) of this section, an agency may pay<sup>[8]</sup> from its appropriations—

(1) travel expenses of a new appointee and transportation expenses of his immediate family and his household goods and personal effects from the place of actual residence at the time of appointment to the place of employment outside the continental United States;

(2) these expenses on the return of an employee from his post of duty outside the continental United States to the place of his actual residence at the time of assignment to duty outside the continental United States; and

(3) the expenses of transporting a privately owned motor vehicle as authorized under section 5727(c) of this title

....

(c) An agency may pay expenses under subsection (a)(2) of this section only after the individual has served for a minimum period of . . .

(2) not less than one nor more than 3 years prescribed in advance by the head of the agency, if employed in any other position; unless separated for reasons beyond his control which are acceptable to the agency concerned. *These expenses are*

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<sup>8</sup> See *Christopher G. Cover*, CBCA 3875-RELO, 15-1 BCA ¶ 35,892, which explains why payment of these costs is mandatory even though the statute reads "may pay."

*payable whether the separation is for Government purposes or for personal convenience.* [emphasis added.]

From the above, it is clear that claimant's statutory rights arising from the completion of his service agreement are not dependent on whether claimant's subsequent transfer to CONUS was in the interest of the Government, nor do they depend on whether relocation costs were included in the vacancy announcements to which he responded. Statutory rights to transportation for himself and his HHG upon return from OCONUS to CONUS accrue upon completing his twelve-month assignment OCONUS, and are not dependant upon the reasons for which he returns. As we stated in *Sherri L. Ellis-Smith*, CBCA 4022-RELO, 15-1 BCA ¶ 36,057:

The Board has recognized that once an employee has successfully completed an OCONUS tour of duty, the agency must pay the cost of relocating that employee either to the home of record or other location selected by the employee, up to the constructive cost of returning the employee to his or her home of record at the time of transfer. See *Sara E. Young*, CBCA 3540-RELO, 14-1 BCA ¶ 35,607 (2013); *William G. Sterling*, CBCA 3424-RELO, 13 BCA ¶ 35,438, *reconsideration denied*, 14-1 BCA ¶ 35,483 (2013); *Michael W. Silva*, CBCA 1707-TRAV, 10-1 BCA ¶ 34,354. Payment of these expenses is mandatory.

*Id.* at 176,076; see *David L. Costello*, CBCA 2677-RELO, 12-1 BCA ¶ 35,012; *David K. Swanson*, GSBCA 136610-RELO, 97-1 BCA ¶ 28,794; *Thomas D. Mulder*, 65 Comp. Gen. 783 (1986); *William F. Krone*, B-213855 (May 31, 1984); see also *Janice F. Stuart*, GSBCA 16596-RELO, 05-1 BCA ¶ 32,960; *Jackie Leverette*, GSBCA 15806-TRAV, 03-1 BCA ¶ 32,119 (a civilian employee transferring from OCONUS to CONUS, Germany to New York, for his own convenience after completion of a service agreement is reimbursed expenses of travel and transportation of HHG); *Paul C. Martin*, GSBCA 13722-RELO, 98-1 BCA ¶ 29,412 (a civilian employee transferring from OCONUS to CONUS, Alaska to West Virginia, for his own convenience after completion of a service agreement is reimbursed expenses of travel and transportation of HHG).

#### Claimant's Transfer was from OCONUS to CONUS

Guam is a non-foreign area, is not overseas, but is OCONUS. The agency contends that claimant's transfer to Guam was a "domestic transfer," as Guam is a non-foreign area. The agency notes that claimant's service agreement does not specify entitlement to "return travel and transportation at Government expense" for claimant for a domestic transfer, but only for a foreign transfer, which his was not. The agency therefore contends that claimant's

service agreement did not grant entitlement to return travel and transportation for HHG for domestic transfers, as Guam is a non-foreign area.

The agency's position on this issue is not correct. As Guam is OCONUS, claimant's entitlement to return travel and transportation for his HHG accrued by completion of his service agreement by virtue of 5 U.S.C. § 5722(a)(2), which makes no distinction between OCONUS foreign and non-foreign areas. The absence of a signed service agreement specifying these rights is not fatal to payment of relocation expenses where the employee in fact performs the required minimum service. *William G. Sterling; Christopher G. Cover; David K. Swanson; Thomas D. Mulder*. While claimant's service agreement appears not to address such rights with regard to transfer to and from non-foreign areas, this does not defeat claimant's statutory rights accruing from his completion of service OCONUS.

#### Claimant is Entitled to Reimbursement of His Transportation Expenses for His HHG

As the agency denied entitlement to reimbursement for transporting his HHG from OCONUS to CONUS, claimant performed the move himself. He claims the following amounts:

Shipping supplies: \$54.95

U.S. Postal Service—shipment of household goods: \$5626.73<sup>[9]</sup>

Packaging and shipping container for bicycle: \$18.00

U.S. Customs Duty Inspection Clearance fee: \$365.00<sup>[10]</sup>

Pursuant to the FTR, as claimant performed the move himself, he is entitled to reimbursement of his actual costs incurred, not to exceed what the Government would have incurred under the actual expense method for shipments OCONUS. 41 CFR 302-7.15. The agency is directed to calculate claimant's entitlement under the actual expense method to determine if claimant has exceeded that amount, and if not, reimburse claimant's actual costs incurred. *Id.* 302-7.200.

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<sup>9</sup> Claimant requested \$5468.41, but his receipts total \$5626.73.

<sup>10</sup> Claimant requested \$374.86, but he only submitted one receipt in the amount of \$365.

**Claimant is Entitled to Reimbursement of the Cost of Return Transportation for His POV**

Claimant seeks reimbursement for shipping his POV to CONUS. He is entitled to these costs pursuant to 5 U.S.C. §5722(a)(3) and the FTR, which reads in relevant part:

**What is a “post of duty” for purposes of this part?**

For purposes of this part, a “post of duty” is an official station outside CONUS.

41 CFR 302-9.3.

**Must my agency authorize transportation or emergency storage of my POV?**

No; however, if your agency does authorize transportation of a POV to your post of duty and you complete your service agreement, your agency must pay for the cost of returning the POV.

41 CFR 302-9.7.

**When am I eligible for return transportation of a POV from my post of duty?**

You are eligible for POV transportation from your post of duty when:

- (a) You were transferred to a post of duty in the interest of the Government; and
- (b) You have a POV at the post of duty.

41 CFR 302-9.200.

**In what situations will my agency pay to transport a POV from my post of duty?**

Your agency will pay to transport a POV from your post of duty when:

- (a) You are transferred back to the official station (including post of duty) from which you transferred to your current post of duty;

- (b) You are transferred to a new official station within CONUS . . . .

41 CFR 302-9.201.

**When do I become entitled to return transportation of my POV from my post of duty to an authorized destination?**

You become entitled to return transportation of your POV from your post of duty to an authorized destination when:

- (a) Your agency determined the use of a POV at your post of duty was in the interest of the Government;
- (b) You have the POV at your post of duty; and
- (c) You have completed your service agreement.

41 CFR 302-9.202.

As the agency authorized transportation of a POV to claimant's post of duty OCONUS and he completed his service agreement, the agency must pay for the cost of returning the POV. Claimant is entitled to reimbursement of the following costs incurred for shipping his POV:

Shipping private owned vehicle (POV): \$2371.18  
Dispatch & shipment of POV by transport carrier service: \$600.00

**Claimant is Not Entitled to Other Costs Claimed**

Claimant has not established the necessity for his staying in a hotel the night before his departure from Guam, nor the statutory or regulatory entitlement for reimbursement of such costs.

Claimant is not entitled to reimbursement for rental vehicles at his old duty station after shipping his POV or at his new duty station while awaiting its arrival, as the rental fulfilled claimant's need for local transportation and was not authorized or used for official business. *George B. Kale II*, CBCA 5847-RELO, 17-1 BCA ¶ 36,624 (2016); *Marsha K. Harrington-Evans*, CBCA 1003-RELO, 08-2 BCA ¶ 33,876; *Patrick O. Walsh*, GSBCA 16243-RELO, 04-1 BCA ¶ 32,520 (2003); *Thomas Slonaker*, GSBCA 15425-RELO, 02-1 BCA ¶ 31,447 (2001).

Claimant is not entitled to “losses of household goods that could not be shipped due to size and weight.” There is no entitlement by statute or regulation for the alleged value of items which an employee abandons at his old duty station.

Claimant also requests monetary compensation for using his airline miles/points to purchase his return flight. An employee’s use of such non-monetary airline rewards to pay for travel is not compensable. *James A. Caughie*, CBCA 2508-RELO, 12-1 BCA ¶ 34,955; *Richard J. Maillet*, GSBCA 16446-RELO, 05-1 BCA ¶ 32,910.

Decision

The claim is granted in part.

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ALLAN H. GOODMAN  
Board Judge