



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

April 11, 2018

CBCA 5706-RELO

In the Matter of PRESTON B. BENOIT

Preston B. Benoit, Penland, NC, Claimant.

William H. Maglin, II, Associate Chief Financial Officer for Financial Management, Internal Revenue Service, Department of the Treasury, Washington, DC, appearing for Department of the Treasury.

ZISCHKAU, Board Judge.

Preston B. Benoit, the claimant, appeals the denial of his claim for “last move home” relocation benefits. We sustain the agency’s determination that Mr. Benoit may not be reimbursed for those benefits in connection with his 2016 retirement because his prior official residence had not changed when he was transferred from New Carrollton, Maryland, to Washington, D.C., in 2011. An agency is authorized to reimburse last move home expenses where the employee meets requirements as set forth in section 302-3.307 of the Federal Travel Regulation (FTR), 41 CFR 302-3.307 (2016) (FTR 302-3.307). Because we agree with the agency that Mr. Benoit was not transferred geographically in the interest of and at the expense of the Government from one official station to another for permanent duty, within the required time period, he is not entitled to the last move home benefit.

Background

Mr. Benoit had been a senior executive service (SES) career appointee since 2011. He considered retiring in September 2016 when he became eligible for retirement having reached his minimum retirement age for his years of service. He requested information on his retirement benefits and received a letter from the agency’s human resources department stating that the “letter will serve as an official verification regarding [his] eligibility and entitlement to a last move home” following his retirement from the agency. The human resources specialist determined that his 2011 transfer from a career service position in New

Carrollton, Maryland, to an SES position in Washington, D.C., met the geographic reassignment criteria for the last move home benefit. The 2011 transfer from a non-SES position to the SES position, however, was a local reassignment within the Washington metropolitan area and did not involve permanent change of station expense reimbursement or any relocation benefits. Apparently, Mr. Benoit did not change his residence in connection with the transfer.

Mr. Benoit argues that he relied in part on the agency eligibility determination letter in deciding to retire on September 30, 2016. He and his wife thereafter sold their home in the Washington metropolitan area and bought a home in North Carolina. In February 2017, he contacted the agency's travel and relocation specialist, who informed him that he was not eligible for last move home relocation expenses. After some further correspondence, the agency issued a determination letter that Mr. Benoit was not eligible for last move home entitlements because he was not "transferred or reassigned geographically in the interest of and at the expense of the Government from one official station to another for permanent duty" within five years of being qualified to receive an optional retirement annuity pursuant to FTR 302-3.307.

Mr. Benoit filed a claim with us and argues that even though his 2011 transfer was local and not at the expense of the Government, this fact should not defeat his eligibility for the last move home benefit. FTR 302-3.307 provides in pertinent part that an employee may receive separation relocation travel if:

- (a) You are a career appointee as defined in 5 U.S.C. 3132(a)(4), and you were transferred or reassigned geographically in the interest of and at the expense of the Government from one official station to another for permanent duty from . . . (3) [a] non-SES career appointment at the time of your transfer . . . to an SES career appointment.

The purpose of this last move home relocation benefit is to provide a benefit on account of the employee having been transferred in the interest of the Government within five years of retirement and in the process of such reassignment having incurred the disruption and expense of moving from one geographic location to another. In this case, Mr. Benoit's transfer in 2011 from New Carrollton, Maryland, to Washington, D.C., did not require him to move his residence at all. *Michael C. Kostelnik*, CBCA 3483-RELO, 13 BCA ¶ 35,430, at 173,796 (claimant cannot be reimbursed for last move home following his retirement, since he lived in the same place when he retired from the agency as when he began service with it). Although Mr. Benoit argues that the agency could have waived, pursuant to FTR 302-2.6(b), the fifty-mile threshold requirement for his 2011 geographically local transfer, and paid him relocation benefits, this did not happen. The September 2016

pre-retirement determination of the agency's human resources representative that the 2011 transfer qualified him for last move home benefits was incorrect, and we have repeatedly held that erroneous agency advice on the payment of benefits does not provide a basis for reimbursement where the expense is not authorized by statute or regulation. *Linda Cashman*, CBCA 3495-RELO, 14-1 BCA ¶ 35,535, at 174,136; *Michael C. Kostelnik*, 13 BCA at 173,796.

Decision

The agency properly determined that it was not authorized to provide Mr. Benoit the last move home benefit upon his separation from the agency. To the extent that Mr. Benoit argues that the agency should rehire him, we have no jurisdiction to consider such a claim. The claim for last move home expenses is denied.

Jonathan D. Zischkau
JONATHAN D. ZISCHKAU
Board Judge