



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

August 13, 2019

CBCA 6553-RELO

In the Matter of BRENDAN J. BOWMAN

Brendan J. Bowman, Carmel, IN, Claimant.

Anthony P. Harris, Human Resources Specialist, Benefits, Compensation & Deployments Division, Office of the Assistant G-1, Civilian Personnel, Headquarters, Department of the Army, Fort Belvoir, VA, appearing for Department of the Army.

LESTER, Board Judge.

The Department of the Army (Army) previously granted claimant, Brendan J. Bowman, reimbursement of costs incurred for a total of 180 days of storage-in-transit (SIT), or temporary storage, of household goods (HHG) as part of his permanent duty station (PDS) change. Mr. Bowman asks us to review a decision by the Department of Defense's United States Per Diem Travel and Transportation Advisory Committee (PDTATAC) denying his request for a SIT extension of an additional 180 days. Because PDTATAC acted within its discretion in deciding not to authorize additional SIT reimbursement, we deny Mr. Bowman's claim.

Statement of Facts

On May 5, 2018, Mr. Bowman accepted a conditional offer of employment from Customs and Border Protection (CBP) within the Department of Homeland Security for a position in Indianapolis, Indiana, but that offer was subject to Mr. Bowman's successful completion of a background investigation and receipt of a favorable suitability determination.

When he accepted the conditional offer, Mr. Bowman had three months remaining on a three-year assignment with the Army in Germany. In August 2018, at the end of that three-year tour, CBP had not yet provided Mr. Bowman with an entrance on duty (EOD) date. Accordingly, Mr. Bowman exercised return rights to his prior position with the Army in Fort Lee, Virginia. Nevertheless, his intent was to remain only temporarily at Fort Lee and to move to Indianapolis as soon as CBP completed its background investigation and provided him with a firm employment offer and an EOD date.

The original travel orders that the Army issued for Mr. Bowman's return to Fort Lee authorized, among other things, HHG shipment and up to ninety days of temporary SIT of HHG. Although Mr. Bowman returned to Fort Lee, he shipped his HHG to Indianapolis, where the HHG were placed into temporary storage while he awaited a firm employment offer from CBP.

Apparently because of an administrative snafu, CBP did not commence Mr. Bowman's background investigation until September 2018, and CBP subsequently informed Mr. Bowman that it would likely take several weeks, if not months, for the investigation to conclude. After Mr. Bowman received this news, the Army command for which he worked amended Mr. Bowman's travel orders to authorize an additional ninety days (beyond the ninety already granted) of SIT, to and including April 1, 2019.

On January 11, 2019, Mr. Bowman submitted to the Army a request for a further extension of his SIT entitlement, this one for an additional 180 days beyond April 1, 2019. Mr. Bowman represented in his request that, although CBP had informed him that his investigation report was complete, additional steps were necessary before CBP could complete his suitability determination, steps that CBP could not then take because of a CBP shutdown caused by a lapse in federal appropriations. He indicated that "[t]his shutdown has caused additional delay and is expected to cause further delay in the hiring process for [his] position with CBP in Indianapolis."

Mr. Bowman's commander recommended approval of Mr. Bowman's 180-day SIT extension request, but, pursuant to section 054307 of the Joint Travel Regulations (JTR), his request for an extension of SIT beyond the initial 180 days was referred to PDTATAC for consideration. On March 21, 2019, a representative for PDTATAC notified Mr. Bowman that his request was denied, providing the following rationale:

[CBP] under the Department of Homeland Security (non-DoD agency) is the gaining Agency responsible for HHG storage cost. DoD responsibility was to transport the HHG back to the old PDS or to the actual residence; not continue SIT HHG benefits on behalf of a non-DoD Agency.

On July 5, 2019, Mr. Bowman submitted his claim to the Board, seeking reimbursement for three months of SIT costs that he incurred before he received a firm employment offer from CBP, moved to the Indianapolis area, and was able to retrieve his HHG.

Discussion

“SIT is short-term storage that is part of HHG transportation.” JTR 054307 (Sept. 2018). Pursuant to the Federal Travel Regulation (FTR), a civilian employee transferring in the interest of the Government from a station outside the continental United States (OCONUS) to a station in the continental United States is entitled to reimbursement for up to ninety days of SIT. 41 CFR 302-7.9(b) (2018). An appropriate agency official can approve a SIT extension of up to an additional ninety days, but, pursuant to the FTR, “[u]nder no circumstances may temporary storage for shipments at Government expense that include an OCONUS origin or destination exceed a total of 180 days.” *Id.*

Although Mr. Bowman has already been granted the maximum 180-day SIT reimbursement that the FTR envisions, the General Services Administration (GSA), which is responsible for promulgating the FTR, has granted the Department of Defense a written waiver, pursuant to an interagency memorandum dated March 30, 2017, permitting PDTATAC to extend that 180-day time limit up to 365 days, but that authority is to be used only “in severely limited circumstances.” *Kelly L. Gunn*, CBCA 5802-RELO, 18-1 BCA ¶ 37,100, at 180,586; *see* JTR 054307-B.1 (discussing GSA waiver memorandum).¹ Pursuant to that waiver, “PDTATAC will consider the merits of individual requests” for SIT extensions beyond 180 days, “on a case-by-case basis, for DoD civilian employees who relocated and encountered unforeseen circumstances beyond their control.” JTR 054307-B. The JTR lists various eligibility criteria that PDTATAC will consider in evaluating a request for a SIT extension beyond 180 days: the serious illness or death of a civilian employee or dependent; a long-term temporary duty (TDY) deployment or training assignment; HHG transportation delays caused by embargos; Acts of God, national or natural disasters, or terrorism; and “[o]ther validated circumstances that are beyond the civilian employee’s control when the Service or Agency determines SIT is in the Government’s interest and establishes that if SIT were not extended, would grossly burden the civilian employee.” JTR 054307-B.2. PDTATAC cannot approve requests that are “for the civilian employee’s personal convenience.” JTR 054307-B.1.

¹ PDTATAC’s waiver authority is set to expire on March 31, 2020.

As the FTR and the JTR make clear, decisions regarding extensions of the SIT period beyond the mandatory minimum are within the discretion of the agency officials designated to make such determinations. FTR 302-7.9; JTR 054307-B; *see Candido G. Delrosario, III*, CBCA 5953-RELO, 18-1 BCA ¶ 37,080, at 180,490; *Richard Whitley*, GSBCA 16734-RELO, 06-1 BCA ¶ 33,169, at 164,358 (2005). “[W]hen regulations vest discretion in an agency with respect to the authorization of particular relocation expenses, the agency’s judgment will not be disturbed unless the determination is arbitrary, capricious, or clearly erroneous.” *William F. Brooks, Jr.*, CBCA 2595-RELO, 12-2 BCA ¶ 35,064, at 172,238.

Here, PDTATAC acted well within its discretion in denying Mr. Bowman’s extension request. Although Mr. Bowman argues that his having to bear three months of SIT costs imposes a gross burden upon him, satisfying a portion of one of the eligibility criteria that PDTATAC may consider, PDTATAC was within its discretion in finding that the choice to wait for a firm job offer from CBP in Indianapolis, rather than to decide to continue his employment with the Army in Fort Lee, was Mr. Bowman’s. When Mr. Bowman’s tour of duty in Germany was ending, the lack of a firm job offer from CBP may have forced Mr. Bowman to exercise his return rights to his prior position in Fort Lee, but nothing required him subsequently to vacate his Fort Lee position. Mr. Bowman had the option of continuing his Army employment and finding permanent housing in Fort Lee upon exercise of his return rights, which would have eliminated the need for continued HHG SIT. The decision to wait for CBP to give him a firm employment offer and to keep his HHG in storage while awaiting that offer was not one that was outside of Mr. Bowman’s control. In such circumstances, PDTATAC properly exercised its discretion in deciding that the Army should not pay additional SIT costs beyond the 180 days that Mr. Bowman had already been granted.

Decision

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

Harold D. Lester, Jr.

HAROLD D. LESTER, JR.

Board Judge