



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

April 9, 2019

CBCA 6378-RELO

In the Matter of MICHAEL P. BAKIOS

Michael P. Bakios, Reno, NV, Claimant.

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

SULLIVAN, Board Judge.

Claimant, Michael P. Bakios, appeals the agency's demand for repayment of relocation expenses incurred when he retired and returned to the United States from an assignment in Greece. The agency, Drug Enforcement Administration (DEA), seeks repayment because Mr. Bakios served overseas for fewer than thirty-six months set forth in the vacancy announcement for the position he accepted. Because Mr. Bakios fulfilled the twenty-four month requirement set forth in his service agreement, Mr. Bakios does not need to repay the relocation expenses to DEA.

Background

In March 2013, DEA issued a vacancy announcement for the position of country attaché for the agency in Athens, Greece. According to the vacancy announcement, the length of the tour of duty in the position was three years and the "employee must be committed to the three years tour-of-duty requirement." In May 2013, Mr. Bakios was selected for the position and, in June 2013, he signed a "Service Agreement - Overseas Transfer" in which Mr. Bakios agreed that he would remain in his post for a period of twenty-four months and, if he failed to fulfill that commitment, the Government would not

be obligated to pay his relocation expenses upon his return to the United States. Mr. Bakios reported to his new assignment in August 2014.

DEA, in its response to Mr. Bakios's appeal, disclaimed knowledge of the service agreement signed by Mr. Bakios, but did not provide a different service agreement for Mr. Bakios. DEA also attached to its response a service agreement signed by Mr. Bakios's predecessor in the position that looks the same as the service agreement signed by Mr. Bakios, except that the time period is thirty-six months and it is signed by a transportation specialist for the agency.

In February 2017, Mr. Bakios requested that his assignment in Greece be curtailed so that he could retire. In the memorandum requesting that curtailment, Mr. Bakios described the service agreement that he signed with the commitment to remain in Greece for twenty-four months. DEA granted his curtailment request and Mr. Bakios returned to the United States and retired on March 31, 2017.

In January 2018, DEA demanded repayment of relocation expenses that it had paid to Mr. Bakios because Mr. Bakios had not occupied the position in Greece for thirty-six months as required by the vacancy announcement for his position. After the agency denied his appeal of this demand for repayment in November 2018, Mr. Bakios filed his appeal with the Board.

Discussion

Agencies are required to pay or reimburse the relocation expenses of government employees incurred when employees return to the United States from an overseas assignment. 5 U.S.C. § 5722(a)(2) (2012); 41 CFR 302-3.300 (2016). That requirement is conditioned, however, upon the employee fulfilling the terms of the service agreement he or she signed prior to taking the overseas assignment. 41 CFR 302-3.300. Agencies are required to have their employees sign service agreements prior to starting a new overseas assignment. *Id.* 302-3.503. If an agency fails to obtain a service agreement, the agency's obligation to reimburse relocation expenses is conditioned upon an employee serving not less than one year and no more than three years as "prescribed in advance by the head of the agency." 5 U.S.C. § 5722(c)(2); *Douglas V. Hamilton*, CBCA 4359-RELO, *et al.*, 15-1 BCA ¶ 35,885, at 175,438.

Mr. Bakios fulfilled the terms of the service agreement that he signed for the position in Greece. That agreement required that he serve twenty-four months. The vacancy announcement cannot supercede the requirements of that service agreement. *See Richard Gong*, CBCA 5824-RELO, 18-1 BCA ¶ 36,997, at 180,168. Mr. Bakios served thirty-one

months before he retired. DEA questions whether the service agreement Mr. Bakios provided was his service agreement for the position, but it did not provide a different service agreement. DEA was required to have Mr. Bakios sign a service agreement prior to his start date in the new position, and the service agreement Mr. Bakios's predecessor signed looks the same as the one Mr. Bakios provided, except for the length of required service and the absence of an agency representative's signature.¹ Finally, Mr. Bakios described the length of time in his service agreement as twenty-four months in correspondence prior to his retirement and the inception of this dispute. For all these reasons, the Board finds that the service agreement Mr. Bakios provided is his service agreement for the position and it governs the resolution of this dispute.

Decision

Mr. Bakios's claim is granted. The agency's demand for repayment is not justified.

Marian E. Sullivan

MARIAN E. SULLIVAN

Board Judge

¹ Applicable regulations require that an employee sign the service agreement. 41 CFR 302-3.503. These regulations are silent on whether an agency representative must also sign the agreement. Therefore, the absence of a signature on Mr. Bakios's agreement does not invalidate the agreement.