



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

August 21, 2019

CBCA 6489-RELO

In the Matter of JONATHAN E. PEARSON

Jonathan E. Pearson, Oklahoma City, OK, Claimant.

Antonio Gonzalez, Chief, Permanent Change of Station Section, Interior Business Center, Department of the Interior, Lakewood, CO, appearing for Department of the Interior.

SULLIVAN, Board Judge.

Claimant, Jonathan Pearson, appeals the attempted collection by the agency, Department of the Interior (Interior), of relocation funds he was paid when he accepted a position with the Bureau of Indian Affairs (BIA) in Nevada. Because the agency has not demonstrated a proper exercise of its discretion in seeking repayment, we grant Mr. Pearson's claim.

Background

Mr. Pearson was hired by BIA in June 2016. The agency reimbursed Mr. Pearson for relocation costs he incurred to move to Nevada from Oklahoma. Mr. Pearson signed a service agreement, in which he agreed to "remain in the Federal Government Service for twelve months following the effective date of the transfer." The service agreement further provided that if Mr. Pearson "fail[ed] to remain in the Federal Government Service for a period of 12 months following the effective date of my transfer, unless separated for reasons beyond my control and acceptable to the agency, and its bureaus and/or offices, relocation costs reimbursed both to me and on my behalf to a third party services provider shall be recoverable from me as a debt due to the United States."

Mr. Pearson was terminated in March 2017, during the probationary period of his employment. According to the notice of personnel action for his termination, Mr. Pearson

was terminated for “misconduct and unacceptable performance.” Interior also provided a memorandum from Mr. Pearson’s supervisor that outlined the reasons that he was terminated, stating, in part, that Mr. Pearson had not “demonstrated during the probationary period the necessary qualifications for continued employment . . . and that termination of your appointment is in the best interest of the [a]gency.” Mr. Pearson disputes the conduct alleged by BIA in the memorandum and offers another explanation for why he was terminated.

Mr. Pearson provided with his notice of claim to the Board the results of an investigation by the State of Nevada Department of Labor regarding the circumstances of his termination. It appears that the Nevada Department of Labor determined that Mr. Pearson was eligible for unemployment benefits because he was not terminated for misconduct. The Nevada Department of Labor stated that the Federal Government reported that Mr. Pearson was “discharged due to not demonstrating the necessary qualifications for continued employment during the probationary period.” Despite the Board’s request, Interior was unable to confirm or deny the accuracy of the statement attributed to it.

Interior first asserted its demand for repayment of \$9223.35, in November 2017. This amount increased to \$13,417.30, with the assessment of interest and penalties by both Interior and the Treasury Department. After Mr. Pearson filed his claim, Interior recalled the debt from the Treasury Department, pending the Board’s decision on Mr. Pearson’s claim.

Discussion

Sections 5723 and 5724 of Title 5 authorize agencies to pay relocation expenses for new appointees and existing employees being relocated in the best interest of the Government. 5 U.S.C. §§ 5723, 5724 (2012).¹ Both sections require that the employee agree “in writing to remain in the Government service for 12 months” after his appointment or transfer, “unless separated for reasons beyond his control” that are “acceptable to the agency concerned.” *Id.* §§ 5723(b), 5724(i). Mr. Pearson’s service agreement and the governing regulations provide that Mr. Pearson would repay the Government relocation expenses “unless separated for reasons beyond [the employee’s] control and acceptable to the agency.” *See* 41 CFR 302-2.15 (2016). The collection of funds is not automatic; instead, agencies must determine whether it is appropriate to recoup the debt “given the individual circumstances of an employee’s departure from federal service prior to fulfillment of the

¹ It is not clear from the record whether Mr. Pearson was a new appointee or a federal employee when BIA relocated him to Nevada. The notice of personnel action provided by Interior includes a service computation date from 2008. However, this fact does not matter for the analysis because the service agreement requirements in both sections are the same.

obligations of the service agreement.” *Jeffrey A. Clements*, CBCA 5334-RELO, 16-1 BCA ¶ 36,445, at 177,632–33. The Board reviews the agency’s determination for an abuse of discretion. *Id.* at 177,633.

Interior failed to exercise its discretion regarding recoupment of the funds from Mr. Pearson. In response to the Board’s request that the agency provide its determination as to whether or why it was appropriate to recoup the debt following Mr. Pearson’s termination, Interior only stated that BIA “submitted to the Interior Business Center a request for a bill of collection be issued to Mr. Pearson upon receipt of an exit clearance form as related to his termination of employment.” The agency also submitted the notice of personnel action and the memorandum from Mr. Pearson’s supervisor. While these documents may explain why Mr. Pearson was terminated, these documents do not show a determination by BIA or Interior regarding whether it would be appropriate to recoup the monies paid.

Without a determination, the Board is left to evaluate the reasons for Mr. Pearson’s termination and whether those reasons constitute “reasons beyond his control that are acceptable to the agency.” It is undisputed that Mr. Pearson did not voluntarily resign his position. The record contains statements that Mr. Pearson was terminated for misconduct and for not meeting the required qualifications of the position. Misconduct by Mr. Pearson might have been within his control, but a decision that he did not meet the required qualifications would not be. Given the weight of the evidence and the failure of the agency to make its own determination, we find that the circumstances of Mr. Pearson’s termination sufficient to excuse him from the obligation to repay the relocation expenses.

In response to the Board’s request for documentation, the agency also provided an excerpt of Office of Personnel Management (OPM) policy for the payment and repayment of relocation incentives paid pursuant to 5 U.S.C. § 5753. These incentives are different from the relocation expenses paid pursuant to 5 U.S.C. § 5723 or § 5724, and OPM’s policy is not applicable to the Board’s evaluation.

Decision

Mr. Pearson’s claim is granted.

Marian E. Sullivan
MARIAN E. SULLIVAN
Board Judge