



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

August 26, 2022

CBCA 7370-RELO

In the Matter of JOAN P.

Joan P., Claimant.

Robert T. Hubble, Comptroller, Alaska Region, National Park Service, Department of the Interior, Anchorage, AK, appearing for Department of the Interior.

O'ROURKE, Board Judge.

An employee who completed her overseas tour in Alaska and then sought to exercise her return rights to Minnesota in conjunction with a remote work request is entitled to return transportation expenses despite an agency policy that prohibits payment of relocation expenses for employee-initiated remote work assignments. Since the employee fulfilled the terms of her service agreement, the employee is entitled to return transportation expenses consistent with that agreement. The subsequent remote work request does not divest the employee's return rights for the overseas tour.

Background

Claimant is an employee with the National Park Service (NPS). In 2019, claimant accepted a position outside of the continental United States (OCONUS) with NPS in Anchorage, Alaska. At the time, claimant was based in Minnesota. In connection with the overseas assignment, claimant signed an employee relocation allowances agreement ("service agreement"), which entitled her to "the cost of travel and transportation, including that of [her] immediate family, household goods, and personal affects" to Alaska, as well as "return transportation" expenses to Minnesota as long as she remained in the position for two years.

On July 22, 2021, claimant completed her two-year service commitment in Alaska and became eligible for return transportation expenses to Minnesota. The following month, the Department of the Interior, the parent organization of NPS, issued a remote work policy, which prohibited agencies from paying relocation expenses to a new remote work location if the relocation is “employee-requested,” since it is for the employee’s own convenience and benefit.

In November 2021, while still in Alaska, claimant submitted a request for a remote work arrangement that would allow her to work for the Alaska office from her home in Minnesota. In her request, claimant stated, “because I am stationed OCONUS, I would exercise my return to home of record.” Although the remote work request was approved, the agency did not authorize the relocation expenses. The agency requested an advance decision on the payment of a claim for relocation expenses in light of the new remote work policy.

Discussion

Under 31 U.S.C. § 3529 (2018), an agency may request an advance decision from the Board “on a question involving . . . (1) a payment the disbursing official or head of the agency will make; or (2) a voucher presented to a certifying official for certification.” Our rules provide that the agency’s request “must refer to a specific payment or voucher,” and “may not seek general legal advice.” Board Rule 502(a)(2) (48 CFR 6101.502(a)(2) (2021)). Since the request before us relates to a claim for relocation expenses and does not seek general legal advice, we find that it falls within the Board’s authority for review. *Cf. Vera A.*, CBCA 7263-TRAV, 22-1 BCA ¶ 38,054, at 184,780 (where the Board declined the agency’s request for an advance decision when it found that a series of questions from the agency about whether to seek reimbursement of a payment already made to the employee was essentially a request for legal advice).

The Federal Travel Regulation (FTR), which applies to federal employees seeking payment of return relocation expenses after completing an overseas tour, provides, in relevant part:

Must my agency pay for return relocation expenses for my immediate family and me once I have completed my duty OCONUS?

Yes, once you have completed your duty OCONUS as specified in your service agreement, your agency must pay one-way transportation expenses for you, for your family member(s), and for your household goods.

41 CFR 302-3.300 (FTR 302-3.300).

The FTR has the force of law and any agency rule that contradicts a provision of the FTR must give way. *Steven P. Lyons*, CBCA 4375-RELO, 15-1 BCA, ¶ 36,072, at 176,147; *see also Adam L. Diehl*, CBCA 5647-RELO, 17-1 BCA ¶ 36,751, at 179,122 (“Only the FTR, not the agency’s handbook, has the force of law.”). The Board has held 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.” *Sheri L. Ellis-Smith*, CBCA 4022-RELO, 15-1 BCA ¶ 36,057, at 176,076 (citing *Sara E. Young*, CBCA 3540-RELO, 14-1 BCA ¶ 35,607, at 174,415).

Here, claimant signed an employee relocation allowance agreement on May 15, 2019, entitling her to return transportation expenses upon fulfillment of a two-year service commitment. The agreement identified the period of service as beginning on July 21, 2019, and ending on July 22, 2021. There is no dispute that claimant fulfilled her service agreement. Her entitlement to return expenses vested on July 22, 2021. Claimant’s request for relocation expenses back to Minnesota was made months after she completed the required period of service and should have been authorized. In rejecting the expenses, the agency improperly conflated the policy regarding relocation expenses for employee-initiated remote work assignments with claimant’s return rights based on her OCONUS tour. These are separate requests. An agency policy cannot negate what the law requires. Denying relocation expenses for an employee-initiated remote work assignment did not disturb claimant’s entitlement to return transportation expenses.

Decision

The agency shall pay claimant’s return transportation expenses consistent with the terms of her service agreement.

Kathleen J. O’Rourke
KATHLEEN J. O’ROURKE
Board Judge