



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

June 23, 2022

CBCA 7373-RELO

In the Matter of GREGORY B.

Gregory B., Claimant.

Robert L. Miller, Attorney Advisor, Army Materiel Command Legal Center – Aberdeen Proving Ground – Huachuca Division, Department of the Army, Fort Huachuca, AZ, appearing for Department of the Army.

RUSSELL, Board Judge.

Claimant, Gregory B., was a civilian employee of the United States Army Information Systems Engineering Command (ISEC) in South Korea who transferred to the Federal Communications Commission (FCC) in Washington, D.C. He has asked this Board to review ISEC’s refusal to reimburse him for relocation expenses incurred during his permanent change of station (PCS) move from ISEC to the FCC. We find that ISEC correctly denied reimbursement of claimant’s relocation expenses because the agency to which an employee is transferring (here, the FCC), not the agency from which an employee is transferring (here, ISEC), is the one responsible for paying an employee’s relocation expenses.

Background

Claimant began working at ISEC on May 27, 2018. For the position, he relocated from his home in Allen, Texas, to South Korea. A transportation agreement between claimant and ISEC stated that ISEC would reimburse claimant for return travel from South Korea to his “actual residence at [the] time of appointment” in Allen, Texas. The transportation agreement also stated that this actual residence address “is not subject to later change for personal reasons.”

In February 2022, claimant notified ISEC that he had accepted a position with the FCC in Washington, D.C. Claimant's new position with the FCC began on March 12, 2022, and the FCC did not offer him relocation benefits. As reflected in a PCS order dated February 28, 2022, ISEC initially agreed to pay most of claimant's relocation expenses to Washington, D.C. However, after legal review, ISEC informed claimant that he was only eligible to be reimbursed by ISEC for return expenses to Allen, Texas, per their transportation agreement. Consistent with that decision and pursuant to the Federal Travel Regulation (FTR), 41 CFR 302-3.101 (2021) (FTR 302-3.101), ISEC issued amended PCS orders authorizing payment of the following expenses to claimant: (1) transportation for claimant and his spouse to Allen, Texas; (2) per diem for claimant; (3) shipment of claimant's household goods (HHG) to Allen, Texas; (4) temporary storage of claimant's HHG; (5) a relocation income tax allowance; and (6) shipment of claimant's personally-owned vehicle (POV). ISEC did not reimburse claimant for expenses that he incurred beyond those, including relocation expenses incurred during his move from Allen, Texas, to Washington, D.C.

Discussion

By statute, federal agencies are required to pay the relocation expenses of federal employees transferring in the interest of the Government from one permanent duty station to another. 5 U.S.C. § 5724(a) (2018). However, "[w]hen an employee transfers from one agency to another, the agency to which he [or she] transfers pays the expenses." *Id.* § 5724(e). The FTR, which contains the travel and relocation regulatory provisions applicable to federal employees authorized to travel at the Government's expense, similarly states that, "[w]hen an employee transfers between Federal agencies, all allowable expenses must be paid from the funds of the agency that the employee is transferring to." FTR 302-2.105.

Claimant argues that his transfer was in the Government's interest, not for his own convenience, and thus he should be reimbursed pursuant to 5 U.S.C. § 5724(a). Claimant might be correct that his transfer was in the interest of the Government. However, pursuant to statute and regulation as summarized above, it is the FCC, the gaining agency, not ISEC, the losing agency, that is responsible for paying claimant's relocation expenses from Texas to Washington, D.C. *See* 5 U.S.C. § 5724(e); *see also* FTR 302-2.105. ISEC authorized claimant to be paid for the expenses that he incurred relocating from South Korea to Texas for which the agency was responsible as set forth in table F of 41 CFR 302-3.101 (i.e., return transportation to Texas, per diem for claimant, and transportation and temporary storage of HHG), payment of an expense that is discretionary under this provision (i.e., shipment of claimant's POV), and a relocation income tax allowance. Accordingly, ISEC fulfilled its relocation payment obligation to claimant.

It is unfortunate that ISEC initially, but incorrectly, agreed to pay claimant's relocation costs for his transfer to the FCC. Nevertheless, "it is well-settled law that the Government cannot be bound by the erroneous advice or action of its agents." *Andrew J. Duff*, GSBICA 15721-RELO, 02-2 BCA ¶ 32,033; *see also Charles J. Shedrick*, CBCA 5066-RELO, 16-1 BCA ¶ 36,566 ("[R]eceipt by claimant of inadequate or erroneous information is not a basis for granting his claim."). Accordingly, by law, we cannot grant claimant the relief that he is requesting.

Decision

The claim is denied.

Beverly M. Russell

BEVERLY M. RUSSELL

Board Judge