



UNITED STATES  
CIVILIAN BOARD OF CONTRACT APPEALS

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August 6, 2008

CBCA 1112-RELO

In the Matter of ROBERT J. POSEY

Robert J. Posey, Eagle River, AK, Claimant.

Susan Erickson, Bureau of Land Management, Department of the Interior, Anchorage, AK, appearing for Department of the Interior.

**STERN**, Board Judge.

Mr. Robert J. Posey appeals the denial of “return to the point of hire” benefits by the Department of the Interior’s Bureau of Land Management (BLM) in Anchorage, Alaska.

Background

On April 4, 2004, Mr. Posey was reassigned to the BLM office in Anchorage, Alaska, from the office in Portland, Oregon. At the time of transfer, Mr. Posey and BLM executed an employment agreement under which Mr. Posey agreed to remain in federal service for twenty-four months subsequent to the date of transfer. The employment agreement contained no provision regarding Mr. Posey’s return to Oregon at the termination of his employment. Mr. Posey completed his two year tour of duty on March 31, 2006.

Upon announcement of his intention to retire, Mr. Posey received a correspondence from BLM advising him that he had “return to point of hire” rights. In this letter, he was also advised,

You should arrange for your return within 6 months of separation. If you need to extend that time for such reasons as illness, getting your home ready to sell, etc., you must make a follow-up request at 6 month intervals. Please keep in mind that you must complete the move by the end of two years. I also want to caution you about accepting any employment. Many times we need to wait for a spouse to complete their work commitments. If you elect to seek employment in Alaska, you will lose your benefit.

Subsequent to Mr. Posey's retirement, at his request, he received three six-month extensions to file an application for "return to point of hire" benefits. Mr. Posey's requests for the extension to file for benefits were to allow his daughters to finish their schooling in Alaska. The extensions to apply for potential benefits ended in March 2008.

During February 2008, Mr. Posey submitted paperwork to BLM to process his "return to point of hire" benefits. Mr. Posey sought to have BLM pay for the expenses of his return travel and the cost of transporting goods back to his place of residence in Oregon at the time of transfer to Alaska. Mr. Posey's papers included a statement that he planned to reside in Oregon. BLM denied the benefit request on the basis that circumstances indicated that Mr. Posey intended to remain an Alaska resident and not become a resident of Oregon. BLM claims that Mr. Posey only intends to maintain a vacation property in Oregon, while keeping his residency in Alaska. BLM cites statements that Mr. Posey made to certain individuals that he intended to retire in Alaska. BLM also references Mr. Posey's 2008 application for the Alaska Permanent Fund Dividend which, in general, requires one to reside in Alaska for a period greater than 180 days a year.

Mr. Posey's submission indicates that his intent is to return to his original place of residence in Oregon and spend the winters in Alaska. Mr. Posey states that when he returns to Oregon he intends to "retain my Alaska residency for hunting and fishing purposes. I have reviewed both Alaska and Oregon regulations pertaining to state residency and determined that as long as I do not register a vehicle in Oregon, register to vote in Oregon, obtain employment in Oregon, or obtain any privileges granted only to a resident of Oregon, I can reside in Oregon indefinitely and still retain Alaska resident hunting and fishing privileges."

### Discussion

Statute authorizes an agency to pay the travel expenses of an employee and the transportation expenses of his immediate family and household goods and personal effects on the employee's return "from his post of duty outside the continental United States to the

place of his actual residence at the time of assignment to duty outside the continental United States.” 5 U.S.C. § 5722 (2000).

The Federal Travel Regulation (FTR) provides that an agency must pay for one-way return relocation (transportation) expenses for the employee, family members, and household goods upon completion of the employee’s duty outside the continental United States (OCONUS) for the purpose of separating from government service. 41 CFR 302-1.1 (FTR 302-1.1); *see* FTR 302-3.101, tbl. F. This travel must be completed within a two year period from the date of transfer. FTR 302-2.110. Section 302-3.300 of the FTR poses the following question and answer:

**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.

Thus, the statute and regulations require the agency to pay an employee’s travel and transportation expenses from his place of assignment outside the continental United States to his place of residence at the time of his transfer outside the United States. Our predecessor board in deciding these matters, the General Services Administration Board of Contract Appeals (GSBCA), has held that an employee is entitled to the payment of his expenses of his return home after he has fulfilled his agreement for services outside the continental United States. *Edward Queair*, GSBCA 15714-RELO, 02-1 BCA ¶ 31,757; *see also, Carlos Antonio Raymond*, GSBCA 16795-RELO, 06-2 BCA ¶ 33,335.

BLM has published a “Tour Renewal and PCS Travel Handbook.” This manual contains a section that sets forth the various expenses that are reimbursable by BLM in an employee’s permanent change of station. It provides:

Upon separation, after completion of the period of service specified in the current employee agreement or upon retirement, an employee is allowed the expense of return travel and transportation; as well as moving and/or storage of household goods to his/her point of hire. . . .

Travel must be incident to separation and should commence within a reasonable time after separation in order for expenses to be reimbursed. The date of return travel must be set at the time of termination and be within a

reasonable time, normally within 6 months; however, the maximum time for beginning all transportation travel, including that of the immediate family and transportation of household goods, shall not exceed 2 years from the effective date of the employee's separation.

BLM Alaska Tour Renewal and PCS Travel Handbook, supp. H-1382-1, at I-19.

While employment agreements executed with employees in the continental United States for work to be performed outside the continental United States frequently contain provisions addressing the employee's right to receive payment for the expenses of his return to the place of hire, the lack of such a provision is not fatal to the employee's right to be reimbursed for such expenses. *Thomas D. Mulder*, 65 Comp. Gen. 900 (1986). Thus, the failure of Mr. Posey's employment agreement to contain a provision regarding his return to Oregon is not fatal to his claim for return to point of hire benefits.

Mr. Posey fulfilled the terms of his employment agreement and sought approval for the reimbursement of the costs of his transportation and movement of goods to his place of residence in Oregon before transfer to Alaska. He retired from federal service on March 31, 2006, and applied for the return to point of hire benefits on February 19, 2008. This fell within the two-year period, including extensions, granted by BLM for Mr. Posey to apply for these benefits. Any delay beyond that time was caused by this dispute.

The basis for BLM's denial of benefits is that Mr. Posey's actions indicate his intent to remain a resident of Alaska even though he might return to Oregon and maintain a house there. Contrary to BLM's position, Mr. Posey is entitled to payment of his travel and transportation expenses to his place of residency at the time of transfer, regardless of his place of residency at separation from government service. There is nothing in the law that prevents the payment of these benefits when an employee, having completed the term of his two years of service, returns to his place of residence before transfer outside the continental United States, even if he does not remain there as a resident.<sup>1</sup> Thus, even if Mr. Posey

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<sup>1</sup> The Comptroller General (the GSBCA's predecessor in deciding these cases) has held that such benefits are payable even if the employee returns to a location other than his original place of residency. *Thelma I. Grimes*, 63 Comp. Gen. 281 (1984). In that case, the cost to the Government should not exceed the constructive cost of travel and transportation to the employee's place of actual residence at the time of the assignment outside the continental United States. *See also* FTR 302-3.301 (providing that an agency is responsible to pay for the transport of an employee's household goods back to a place other than his actual place of residence. "However, the cost cannot exceed what it would

intends to maintain his residence in Alaska, it is not an impediment to his entitlement to benefits for his return to the point of hire.

Decision

Mr. Posey is entitled to receive payment for the expenses of his return to Oregon.

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JAMES L. STERN  
Board Judge

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cost to your actual place of residence.”)