



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

September 25, 2013

CBCA 3071-RELO

In the Matter of BARBARA L. MASSEY-NINO

Barbara L. Massey-Nino, Portland, OR, Claimant.

Melanie Lampert Ryan, Attorney Advisor, Office of General Counsel, Department of Housing and Urban Development, Seattle, WA.

STEEL, Board Judge.

Background

Barbara L. Massey-Nino is a former employee of the Department of Housing and Urban Development (HUD) and the Department of the Interior's Fish and Wildlife Service (FWS). In 2002 claimant moved from her home in Susanville, California to Anchorage, Alaska to take a job with FWS. In 2003, she transferred to a position with HUD that was also in Anchorage, Alaska. In August 2006, claimant retired from HUD and sought return relocation benefits to return to Susanville, California.

Claimant made a claim with HUD on October 23, 2007, asking for return relocation benefits. HUD denied the claim on November 1, 2007. On November 6, 2012, claimant asked the Board to review HUD's decision.

Discussion

Claimant asserts that when she was employed at FWS she was granted relocation benefits to and from Anchorage, Alaska as a new appointee and that when she transferred

to HUD, these relocation benefits transferred with her. She further asserts that as a result of HUD's denial of return relocation benefits, she was forced to liquidate all of her assets, including her Alaska home, vehicles, and furniture. She claims entitlement to \$501,541.52.

HUD avers that this claim is untimely. HUD cites 31 U.S.C. § 3702, which states in pertinent part, "[T]he claim must be received by the official responsible under subsection (a) for settling the claim or by the agency that conducts the activity from which the claim arises within 6 years after the claim accrues[.]" 31 U.S.C. § 3702(b)(1) (2006). HUD argues that because claimant's claim accrued in August 2006, but was not brought before the Board until November 2012, more than six years later, it is untimely.

HUD misreads 31 U.S.C. § 3702. The statute permits claims which are received by the Board or the affected agency within six years of the date on which the claim accrues. Claimant submitted her claim to HUD a little more than one year after the claim accrued. It was therefore timely under the statute. In order for a claim to qualify for Board review, pursuant to Board Rule 401 (48 CFR 6104.401 (2012)), it must be received by the Board within six years of the claim being filed with the agency. Rule 401(a). Claimant meets this test as well. The Board received her claim five years and five days after she filed with HUD.

In order for claimant to recover return relocation benefits, however, she must prove that she was eligible for the benefits. 48 CFR 6104.401(c)(2012). The record establishes that claimant was ineligible for return relocation benefits while at Fish and Wildlife. An Eligibility to Transfer Agreement bearing her signature states she is "ineligible for turn around leave." This is because the position for which she was hired in Alaska was classified by the agency as permanent, rather than one which would constitute a "prescribed tour duty . . . overseas" which would entitle the employee to reimbursement for the costs of returning from the post upon separation from government service. *See* 41 CFR 302-1.1(e)(2006).

Decision

The claim is denied.

CANDIDA S. STEEL
Board Judge

