



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

January 15, 2014

CBCA 3463-RELO

In the Matter of JAMES C. KABEL

James C. Kabel, Nokesville, VA, Claimant.

James E. Hicks, Office of Chief Counsel, Drug Enforcement Administration,
Department of Justice, Springfield, VA, appearing for Department of Justice

VERGILIO, Board Judge.

The claimant voluntarily retired before completing twelve months of service after his transfer. The agency reasonably determined that the claimant's failure to fulfill the terms of his service agreement did not arise from reasons beyond his control. The Board upholds the claimant's indebtedness for relocation expenses and allowances previously paid by the Government.

James C. Kabel, claimant, as an employee of the Drug Enforcement Administration (agency), signed a service agreement that detailed obligations and liabilities connected with receiving relocation benefits associated with a change of duty stations. Consistent with regulation and the written policies of the agency, the claimant received relocation benefits after agreeing to remain in Government service for twelve months after his transfer. The explicit terms of regulation, written policies, and the signed agreement specified that should the claimant not satisfy the terms of the agreement (e.g., fail to remain in Government service for twelve months after the transfer, unless separated for reasons beyond his control that are acceptable to the agency), the claimant would incur a debt due to the Government for money spent for expenses and allowances. The claimant retired before completing one year of Government service. Concluding that the claimant did not separate for reasons beyond his control, the agency has found the claimant liable for a debt to the Government of \$25,474.99. The claimant disputes the determination.

The claimant opted to retire after completing approximately eleven, but not twelve, months of service following the transfer. The record indicates that the claimant made such

an election for financial reasons (the claimant asserts that the “decision to retire was made in good faith and out of necessity, for financial reasons”). The claimant asks that the Board consider that he signed his service agreement in November 2008, filed for retirement in May 2010, and was unaware of, and at that time not alerted to, the potential liabilities for failing to complete twelve months of service. The claimant maintains that he would have remained in service had he been forewarned of the liabilities he could incur. Further, the claimant contends that he substantially performed his obligations under the agreement by completing eleven of the required minimum twelve months of service, and requests that the Board consider that since retiring he has been employed by a private company and has worked with the agency.

The terms of his written agreement are clear:

if I fail to fulfill the terms of this agreement by resignation, voluntarily retiring . . . or if I am removed for cause (as distinguished from a reason beyond my control and acceptable to the Drug Enforcement Administration) before the end of the twelve-month period, I will repay the United States Government all costs the Drug Enforcement Administration has paid towards my relocation expenses[.]

In consideration of the agency paying relocation expenses, the claimant agreed to remain in the employ of the Government for twelve months after the date of reporting for duty at the new duty station. Further, the claimant agreed that he would repay all costs paid toward his relocation expenses should he fail to fulfill the terms of the agreement by resigning or voluntarily retiring before the end of the twelve-month period. This agreement is fully consistent with requirements of applicable relocation regulations--the Federal Travel Regulation (FTR), 41 CFR 302-2.13, -14 (2009) (“if you violate a service agreement (other than for reasons beyond your control and which must be acceptable by your agency), you will have incurred a debt due to the Government and you must reimburse all costs that your agency has paid towards your relocation expenses”).

The claimant has identified no basis to support a conclusion that his retirement or separation was for a reason beyond his control. His asserted lack of knowledge of the one-year service requirement, despite the language in the written agreement he signed prior to transferring and obtaining benefits, does not constitute a basis beyond his control. That he opted to retire for financial reasons, but could have remained in Government service for the additional days to complete one year of service, similarly does not suggest a basis for separation beyond his control. Although the claimant alleges that he substantially performed the terms of the agreement, he recognizes that he did not satisfy the express conditions. Even if one deems eleven months to be substantial completion, such is not relevant to the analysis

under the regulation and written agreement, which do not address substantial compliance; twelve months is the minimally acceptable period for service for an employee to fulfill obligations. Working for a contractor to the agency does not constitute being a Government employee. The claimant inappropriately attempts to shift blame to the agency for not expressly notifying him of the consequences of his retirement. The claimant received the benefits of the relocation with the agreement that he would be liable for repayment should he not satisfy the terms of the agreement. The burden and obligation of knowledge were within the claimant's control. *Jose A. Baeza*, CBCA 2097-RELO, 10-2 BCA ¶ 34,575.

The agency appropriately concluded that the claimant has a debt due the Government in the amount of \$25,474.99. The Board denies the claim.

JOSEPH A. VERGILIO
Board Judge