UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

March 15, 2016

CBCA 5144-RELO

In the Matter of BRUCE R. WAINER

Bruce R. Wainer, Virginia Beach, VA, Claimant.

Zeb T. Swinney, Financial Systems Analyst, Enterprise Solutions and Standards, Travel Functional Area, Defense Finance and Accounting Service, Indianapolis, IN, appearing for Department of Defense.

GOODMAN, Board Judge.

Claimant, Bruce R. Wainer, is a civilian employee of the Department of Defense. He has asked this Board to review the agency's denial of reimbursement of costs he incurred during a permanent change of station (PCS).

Factual Background

Claimant received PCS orders from his gaining command at his new permanent duty station dated May 19, 2015 to transfer from Yokasuka, Japan to Portsmouth, Virginia. The orders authorized reimbursement of temporary quarters subsistence expenses (TQSE) by the actual expense method. Claimant accomplished the transfer in June 2015 and submitted a voucher for reimbursement of TQSE incurred.

The agency denied reimbursement of the TQSE for administrative reasons, one of which was the fact that claimant did not have a signed transportation agreement. After claimant requested review of the agency's denial, the agency reviewed this matter again and

issued a memorandum to this Board with instructions to claimant which stated, in relevant part[1]:

> [The agency] can pay this claim but will need several corrections to make the claim pay ready. . . .
>
> [Claimant's orders show] no transportation agreement was signed. FTR [Federal Travel Regulation] 302-6.7 requires a signed service agreement for TQSE. In [*Randall S. Kendrick*,] CBCA 4096-RELO [, 14-1 BCA ¶ 35,772] the board ruled that TQSE may be paid without a service agreement, but only if the employee had served the equivalent of a full service agreement term before the TQSE is reimbursed. That is not the situation in this case. To process the claim [the agency] will need a copy of the signed transportation agreement or amended orders changing block 21 to show that a service agreement was signed with notation in block 28 that the change was due to administrative error.

After receiving the memorandum, claimant received from the agency and signed a transportation agreement on March 4, 2016, that read in relevant part:

> 5 U.S.C. § 5723 and § 5724, as amended, provide, under certain conditions, for travel and transportation expenses of an employee (including eligible new appointees or student trainees in certain circumstances), appropriate allowances for the employee's immediate family, movement and storage of household goods (HHG) and personal effects, and certain other allowances incident to an appointment or transfer to and within CONUS [the Continental United States]. Under the law, the allowances are not authorized unless an employee agrees in writing to remain in the Government service for a minimum of 12 months. Accordingly, to establish eligibility for the authorized allowances, the following agreement must be executed.
>
> I understand and agree that: a. I will remain in Government service for a minimum of 12 months beginning with the date I report for duty at my new or first PDS, unless I am separated for reasons beyond my control that are acceptable to the agency concerned. b. If I fail to serve the required minimum period of time, or if I am removed for cause before expiration of the required

[1] Other administrative instructions, not relevant to the resolution of this case, were enumerated.

> minimum period of service, I am obligated and will, upon demand, repay to the Government a sum of money equivalent to what the Government paid for travel and transportation expenses and related allowances associated with the transfer of myself and my dependents, e.g., . . . temporary quarters subsistence expenses, . . . and any other related allowances incident to my transfer, from beginning point of travel to the PDS.

After claimant executed the transportation agreement, the agency again denied reimbursement of claimant's TQSE expenses, asserting that claimant is not entitled to reimbursement because had has not fulfilled his twelve-month service obligation at his new PDS.

Discussion

Section 5724a of title 5 of the United States Code provides agencies with the authority to pay travel and other expenses attendant to the transfer of an employee from one duty station to another when the transfer is in the interest of the Federal Government. 5 U.S.C. § 5724a (2012). Pursuant to the FTR, as a condition to obtaining reimbursement of relocation expenses, an employee must sign a service agreement in which the employee agrees to remain in the service of the Federal Government for a specified period of time. 41 CFR 302-2.13 (2015); *see id*. 302-6.7(b) (requires a signed service agreement for TQSE). A service agreement is defined in the Joint Travel Regulations (JTR), applicable to civilian employees of the Department of Defense, as "a written agreement, prepared IAW [in accordance with] personnel regulations, between the employee and the employee's agency, signed by the employee and an authorized agency representative stating that employee agrees to remain in gov't service for a period of time specified in par. 5840-B, after the employee has relocated." JTR 5820; *see* 41 CFR 302-2.13 (similar language in FTR). If an employee fails to sign a service agreement, the agency will not pay for relocation expenses. JTR 5820-B; 41 CFR 302-2.18.

For a transfer to a new duty station located within CONUS, a DOD civilian employee must agree to remain in federal service for a period of twelve months following the effective date of the transfer. JTR 5828; *see also* 41 CFR 302-2.14 (same requirement). If an employee fails to fulfill the requirements of a service agreement, the employee can be required to repay any travel or relocation expenses paid by the agency. 41 CFR 302-2.15.

While claimant's transportation agreement contains all the requirements of a service agreement required by law and regulation that entitle him to reimbursement of his TQSE, the the agency has continued to deny reimbursement, citing this Board's decision in *Kendrick*.

In that case, the agency sought to recoup from the employee previously reimbursed TQSE because the employee did not sign a service agreement until after he incurred his TQSE. The Board held that the employee was not obligated to pay back the previously reimbursed expenses, as he ultimately signed a service agreement after incurring the costs, thereby fulfilling the requirement that he have an obligation to remain in government service for twelve months after the transfer as a condition for receiving relocation benefits. The Board noted that the employee had fulfilled his twelve-month service obligation by the time the Board had rendered its decision.

In the instant case, the agency has erroneously interpreted *Kendrick* to require an employee to fulfill the twelve-month service obligation before reimbursement can be made. The law, applicable regulations, the claimant's transportation agreement, and our previous decisions (*see Kendrick* and cases cited therein) only require that the employee agree to an obligation of twelve months of government service as a condition for payment of TQSE or other relocation expenses. While a failure to serve the twelve-month obligation gives rise to the agency's right to recoup previously paid reimbursements, there is no requirement that an employee remain in service for twelve months before reimbursement of relocation benefits can be made. Such a requirement would be an extreme hardship for those who have incurred costs incident to transfer.

Even though claimant did not sign the transportation agreement until after the expenses were incurred, he is now entitled to reimbursement of all valid TQSE incurred, as the service agreement contains his obligation to remain in service for twelve months.

Decision

The claim is granted.

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ALLAN H. GOODMAN
Board Judge