



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

June 8, 2020

CBCA 6674-RELO

In the Matter of KENDRA O. FINKLEA

Kendra O. Finklea, Claimant.

Angela Cominetti, Program Manager, Directorate of Civilian Personnel Operations, Headquarters, Air Force Personnel Center, Department of the Air Force, Joint Base San Antonio-Randolph, TX, appearing for Department of the Air Force.

KULLBERG, Board Judge.

Claimant, Kendra O. Finklea, seeks the constructive cost of return from her permanent duty station (PDS) outside the continental United States (OCONUS) to her actual residence in Fairbanks, Alaska. Claimant seeks to apply the constructive cost to pay for her relocation to her new PDS in Washington, D.C. The agency, the United States Air Force (USAF), contends that claimant is not entitled to such costs because she had agreed to extend her initial thirty-six-month OCONUS tour of duty by an additional twenty-four months, and she did not complete that period of service before relocating to her new PDS. For the reasons stated below, the Board grants the claim and remands this matter to the agency to determine claimant's reimbursement consistent with this decision.

Background

On February 8, 2016, claimant executed a service agreement in conjunction with relocating from her actual residence in Fairbanks, Alaska, to a position with the Department of the Navy (Navy) in Yokosuka, Japan. That agreement provided that upon completing thirty-six months of the prescribed tour of duty, she would be eligible for return travel and

transportation allowances at government expense for herself, her dependents, and her household goods (HHG) to her actual residence. She reported for work at her new duty station on April 3, 2016.

On January 11, 2018, claimant executed a service agreement in conjunction with her transfer from Yokosuka to Misawa Air Base, Japan. She reported for duty at her new PDS on March 11, 2018. The remarks section of the new service agreement stated that “[e]mployee moved from Fort Wainwright, [Alaska] to . . . Yokosuka, Japan on 04/03/2018 ([estimated return from overseas service (DEROS)]: 4/02/2019, Tour of Duty 36 months). Tour of Duty at Misawa will be difference of the Actual [entrance on duty date (EOD)] at Misawa and 4/02/2019 – approx[imately] 12-months.”

On July 17, 2018, claimant signed a renewal agreement in which she agreed to complete an additional twenty-four months of her tour of duty at Misawa Air Base. That renewal agreement also provided the following:

The civilian employee is authorized certain unused allowances accrued under a prior service agreement under which the civilian employee completed the agreed-upon service period. These include personal transportation and the transportation of dependents and HHG—including [storage in transit (SIT)]—from the PDS where the service agreement was satisfied to the actual residence.

The USAF authorized claimant to take renewal agreement travel (RAT) from November 5 to 23, 2018.

On or about December 6, 2019, claimant requested that the USAF issue permanent change of station orders to her new PDS with the Navy in Washington, D.C. The USAF determined that she would not be eligible to return from her OCONUS PDS at government expense until April 4, 2021, and declined to issue PCS orders. Claimant subsequently submitted her claim to the Board for “PCS orders covering the cost of [her] travel and transportation return to Fairbanks, Alaska.”

Discussion

The issue before the Board is whether claimant is entitled to travel and transportation expenses up to the cost of returning to her actual residence in Fairbanks, Alaska, even though she did not complete the full term of her renewal agreement. Statute, in pertinent part, provides the following:

(a) Under regulations prescribed under section 5738 of this title and subject to subsections (b) and (c) of this section, an agency may pay from its appropriations—

(1) travel expenses of a new appointee and transportation expenses of his immediate family and his household goods and personal effects from the place of actual residence at the time of appointment to the place of employment outside the continental United States;

(2) these expenses on the return of an employee 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; and

....

(c) An agency may pay expenses under subsection (a)(2) of this section only after the individual has served for a minimum period of—

....

(2) not less than one nor more than 3 years prescribed in advance by the head of the agency . . . ;

unless separated for reasons beyond his control which are acceptable to the agency concerned. These expenses are payable whether the separation is for Government purposes or for personal convenience.

5 U.S.C. § 5722 (2018). Additionally, statute provides that “[w]hen an employee transfers to a post of duty outside the continental United States, his expenses of travel and transportation to and from the post shall be allowed to the same extent and with the same limitations prescribed for a new appointee under section 5722 of this title.” *Id* § 5724(d).

The Federal Travel Regulation (FTR), which applies to claimant, states the following:

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.

41 CFR 302-3.300 (2019) (FTR 302-3.300). If an employee does not fulfill the terms of the service agreement, the FTR provides the following:

If I violate my new service agreement, will the Government reimburse me for return travel and transportation to my actual place of residence?

If you violate your new service agreement, the Government will reimburse you for return travel and transportation to your actual place of residence only if you did not receive all of your allowances under a previous service agreement in which you successfully completed your required period of service. The Government will then authorize you reimbursement cost for return travel and transportation expenses from your former post of duty to your actual place of residence. If there is any additional cost you must pay the difference.

Id. 302-3.224.

The Joint Travel Regulations (JTR), which also apply to claimant, provide that when an employee is serving under a renewal agreement, the following applies:

The civilian employee is authorized certain unused allowances accrued under a prior service agreement under which the civilian employee completed the agreed-upon service period. These include personal transportation and the transportation of dependents and HHG (including SIT) from the PDS where the service requirement was satisfied to the actual residence. . . . If the amount of the unused allowances is less than the costs to return to the actual residence, the difference is the civilian employee's financial responsibility.

JTR 054913-D.3.b. The JTR also provides that “[t]he losing activity OCONUS pays a civilian employee’s travel and transportation allowances to the authorized separation destination, limited to those payable to the actual residence, even if the civilian employee is employed, without a break in service, by a different [Department of Defense (DoD)] Component after arrival at the authorized separation destination.” *Id.* 054809-D.1.

Statute and regulation do not support the USAF’s position that claimant’s renewal agreement required her to serve an additional twenty-four months at her OCONUS PDS before using her previously accrued entitlement to travel and transportation expenses to return to her actual residence. Once an employee’s entitlement to the cost of returning to his or her former residence from an OCONUS tour of duty vests under a service agreement, that entitlement remains in effect even if that employee executes but fails to fulfill the terms of a subsequent service agreement. *See Annette M. Zapf*, CBCA 4761-RELO, 15-1 BCA

¶ 36,087; *Neil Gorter*, B-194448 (Apr. 28, 1980). “[O]nce an employee has successfully completed an OCONUS tour of duty, the agency must pay the cost of relocating that employee either to the home of record or other location selected by the employee, up to the constructive cost of returning the employee to his or her home of record at the time of transfer.” *Sheri L. Ellis-Smith*, CBCA 4022-RELO, 15-1 BCA ¶ 36,057 (citing *Sara E. Young*, CBCA 3540-RELO, 14-1 BCA ¶ 35,607 (2013); *William G. Sterling*, CBCA 3424-RELO, 13 BCA ¶ 35,438, *reconsideration denied*, 14-1 BCA ¶ 35,483 (2013); *Michael W. Silva*, CBCA 1707-TRAV, 10-1 BCA ¶ 34,354). There is no dispute that claimant served an OCONUS tour of thirty-six months that met the required length of service under her initial service agreement. She is entitled, therefore, to reimbursement of her travel and transportation expenses to return to her actual residence in Fairbanks, Alaska, or to apply those expenses to relocating to an alternate location.

Decision

The claim is granted. The claim is remanded to the agency for payment of travel and transportation expenses in accordance with this decision.

H. Chuck Kullberg
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Board Judge