UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

May 30, 2023

CBCA 7621-RELO

In the Matter of ROBERT M.

Robert M., Claimant.

Breanna A. Heilicher, Office of General Counsel, National Geospatial-Intelligence Agency, Springfield, VA, appearing for National Geospatial-Intelligence Agency.

LESTER, Board Judge.

Claimant is an employee of the National Geospatial-Intelligence Agency (NGA), a combat support agency within the Department of Defense. Just before claimant was set to return to a civil service post in the continental United States (CONUS) after having spent several years at a permanent duty station (PDS) outside of the continental United States (OCONUS), he was called to active military duty with the United States Army (Army). After learning about claimant's military duty, the NGA took steps to transfer claimant back to his CONUS duty station with an effective date of one day before claimant's military duty report date. Neither claimant nor his dependents returned to the CONUS duty station at that time, and, to this day, claimant remains in a leave-without-pay status with the NGA while continuing to serve his military duty near his former OCONUS duty station.

The NGA acknowledges that the Federal Travel Regulation (FTR) provides that, if an individual is called to active duty while relocating to a new PDS, that individual is entitled to extend the time for completing relocation and for utilizing relocation benefits. The NGA insists, however, that claimant's dependents, who live at the OCONUS duty post with claimant, do not benefit from that extension. The NGA argues that, because claimant's dependents did not return to claimant's prior CONUS duty station within one year after the NGA transferred claimant there, they are now barred from being reimbursed for any future return. Similarly, although the NGA had been paying for nontemporary storage (NTS) of

claimant's household goods (HHG) at his old CONUS duty station, the NGA argues that claimant's dependents, had they timely returned to the CONUS PDS, could have and should have retrieved the HHG from NTS within a reasonable time after claimant's CONUS transfer. Because they did not, the NGA argues, claimant is now financially responsible for any continuing HHG NTS costs.

Claimant asks the Board to find that the extension of time for using relocation benefits following the employee's military duty applies equally to him and to his dependents and, further, that his HHG NTS entitlement should continue until after he is released from active duty and has relocated back to his CONUS duty station. For the reasons discussed below, we agree with claimant.

Background

In August 2015, claimant transferred from a PDS in St. Louis, Missouri, to a three-year OCONUS tour of duty in Vicenza, Italy. Claimant's travel authorization indicates that, as part of that permanent change of station (PCS), claimant signed a transportation or service agreement pursuant to which, at the end of his Vicenza tour of duty, claimant would be entitled to transportation for himself and his dependents back to St. Louis as long as he completed his time obligation at his OCONUS post.

Claimant's travel authorization for his transfer provided for the "concurrent" travel of claimant, his wife, and his children to and from Vicenza. It also authorized, among other things, reimbursement for NTS of his family's HHG at his original duty station in St. Louis, Missouri, during his tour of duty in Vicenza. Based upon the travel authorization, claimant and his family placed their HHG into NTS in St. Louis before they departed for Italy.

In 2017 and 2020, the NGA extended claimant's OCONUS tour of duty, both times authorizing entitlement to continued HHG NTS in St. Louis while claimant remained in Italy. With the 2020 extension, claimant's estimated CONUS return date was August 13, 2021.

In March 2021, claimant applied for and received an order from the United States Army to report for active military duty in Vicenza, Italy, with a report date of July 12, 2021.

After learning of that military order, the NGA issued a travel order requiring claimant to relocate from Vicenza back to St. Louis effective July 11, 2021, the day before claimant was to report for military duty. Subsequently, in an email dated June 14, 2021, an NGA Branch Chief for Worklife and Relocation Services informed claimant that, although provisions in the federal travel regulations dealing with military furloughs expand the normal one-year deadline that employees otherwise have to complete a duty station transfer, the

expanded period of time does not apply to claimant's dependents, who would still have to return to St. Louis within one year of the July 11, 2021, transfer date:

> * You: You will have one-year from the date of your NGA PCS orders to complete your PCS entitlement. Because you are entering military service, any time spent in military service does not count towards that one year deadline. For example, assuming you begin your military orders the day after your NGA orders end, you will have approximately 364 days from the date you complete your military orders to execute your PCS entitlements. This deadline is not the same as your reporting date back to [your St. Louis duty station] once you complete your military orders. While you are on military orders, your status will be [leave-without-pay-United-States]. Once you complete your military orders, you will have 90-days to notify Career Services of your intent to return to your NGA position. Career Services will then assist you [in] find[ing] a new position and negotiate a start date. Career Services will consider your HHG shipment when negotiating a start date. The negotiated start date will most likely be before your deadline on your PCS entitlement.
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> * Your dependents: Once we issue orders with a reporting date of 11 July 2021, your dependents will have one-years [sic] to execute the PCS entitlement. Your family does not benefit from the extension due to military service as you do. They will be required to execute their PCS entitlement by 11 July 2022.

Claimant began his military duty, which was supposed to last one year, on July 12, 2021. Neither claimant nor his family returned to St. Louis before claimant reported for military duty. In June 2022, the Army extended claimant's military duty through July 11, 2023. Subsequently, by email dated June 22, 2022, the NGA Branch Chief for Worklife and Relocation Services provided claimant with what she described as "a reminder regarding [claimant's] family status for the PCS orders [that claimant was] issued with a reporting date of 12 July 2021." She indicated by email that "[y]our dependents have one-years [sic] to execute the PCS entitlement" and that "[y]our family does not benefit from the extension due to military service as you do. They will be required to execute their PCS entitlement by 11 July 2022 or expenses cannot be reimbursed." Claimant's family did not return to St. Louis.

On November 16, 2022, claimant received notice that his entitlement to HHG NTS in St. Louis had ended on September 30, 2022. In response to claimant's inquiries, a human resource officer for the NGA informed claimant that his PCS orders "returned you to CONUS (St. Louis) in July of 2021" and that "[y]ou are not eligible for NTS and [continued storage] would be at your expense." On March 23, 2023, the Army provided claimant with

a pay adjustment authorization notice, indicating that, based upon information provided by the NGA, he "owes the government" a total of $2061.90 "for [NTS] beyond his authorized entitlement." In the notice, it was reported that claimant "left [NGA] in Italy on 11 July 2021 and was called to active duty," that claimant "has 6360 lbs. in NTS," and that he "owes the government [$142.20 per month] for storage period 11 Oct [2021] to 31 Dec 2023" for a total of $2061.90.

Claimant submitted his challenge to the NGA's disposition of his claims to the Board on December 23, 2022, complaining about the NGA's direction that his dependents had forfeited their relocation benefits for their return to St. Louis and about charges that he is now incurring for continuing NTS. As of the date of this decision, claimant is still on active duty in Vicenza and, since July 2021, has been in a leave-without-pay status with the NGA.

Discussion

The Board's Authority to Resolve the Claims

Claimant has two claims before us. First, claimant argues that the NGA's notice that his dependents have waived their relocation benefits misinterprets the relevant Federal Travel Regulation (FTR) and Joint Travel Regulations (JTR) provisions and, further, violates the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), 38 U.S.C. §§ 4301–4335 (2018). Second, claimant argues that the NGA's refusal to continue NTS payments during his active military duty misinterprets the FTR and, again, violates USERRA as well as the NGA's own policy.

Before considering these claims, we first address our review authority. Our delegation of authority from the Administrator of General Services allows us to "settle claims involving expenses incurred by Federal civilian employees for official travel and transportation, and for relocation expenses incident to transfers of official duty station." 31 U.S.C. § 3702(a)(3) (2018). Because the NGA has already billed claimant for costs associated with his HHG NTS, there is no question that we have authority to address that claim. The NGA, though, argues that we lack authority to consider claimant's first claim—the claim involving the dependents' not-yet-incurred relocation expenses—because "[c]laimant has conceded he has not yet suffered any harm or damages in this issue" and therefore "has failed to state a claim and is not entitled to relief." Agency's Response (Jan. 27, 2023) at 3.

In the past, we have interpreted our authority in considering travel and relocation claims as being limited to claims involving, as the statute says, "expenses incurred" for travel or relocation. *Bradley A. O'Neil*, CBCA 6701-RELO, 20-1 BCA ¶ 37,687, at 182,976; *see John R. Durant*, GSBCA 15726-TRAV, 02-1 ¶ 31,827, at 157,260 (A claim must "be one

for 'expenses incurred' by the employee."); *Charles W. Adams*, GSBCA 15052-TRAV, 1999 WL 771056 (Sept. 28, 1999) (Where "claimant has not filed a claim for the travel expense of business-class air travel because he has not yet incurred the expense," the claim is "premature."). Nevertheless, when relocation benefits are involved, we have recognized an exception where a "claimant has a definite and concrete intent to incur relocation expenses . . . but the agency's refusal to extend the time has frustrated any possibility of reimbursement." *George R. Saulsbery*, GSBCA 16027-RELO, 03-1 BCA ¶ 32,179, at 170,900; *see Jorge J. Martinez*, CBCA 2265-RELO, 11-1 BCA ¶ 34,704, at 159,084; *Julio Gagot-Mangual*, GSBCA 16117-TRAV, 04-1 BCA ¶ 32,467, at 160,587 (2003). Contrary to the NGA's argument, claimant falls within that exception here.[1] We review both of claimant's claims below.

Dependents' Entitlement to Relocation Benefits

An employee's "effective transfer . . . date" is "the date on which [the employee] report[s] for duty at [the employee's] new . . . official station." FTR 302-2.4 (41 CFR 302-2.4 (2015)).[2] Here, the NGA told claimant that he was to report for duty at his CONUS PDS on July 11, 2021. The FTR advises that the transferred employee and his family have one year from the effective transfer date to complete all aspects of the relocation:

When must I complete all aspects [of] my relocation?

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[1] Even if claimant had not identified his dependents' "definite and concrete intent" to incur relocation expenses, in this particular case, we cannot fully resolve the NGA's defenses to claimant's second claim (the NTS claim) if we do not address claimant's first claim. The NGA has argued that it was entitled to stop paying claimant's NTS costs because, had claimant's dependents returned to the CONUS duty station when they should have (that is, within a reasonable time after claimant was transferred there effective July 11, 2021), the dependents would have retrieved the HHG from NTS, which would have precluded any continued incurrence of NTS costs. The validity of the NGA's defense to claimant's second claim necessarily depends on the Board's resolution of claimant's first claim, rendering resolution of the first claim necessary.

[2] Because claimant executed the service agreement for his OCONUS tour of duty in 2015, and because his satisfaction of his obligations under that agreement provides the basis of his current return rights, *see Kenneth J. Dexter*, CBCA 3130-RELO, 13 BCA ¶ 35,236, at 172,998, we cite to and rely upon the 2015 version of the FTR in this decision.

> You and your immediate family member(s) must complete all aspects of your relocation within one year from the effective date of your transfer . . . , except as provided in § 302-2.10 or § 302-2.11.

Id. 302-2.9. Were we to apply that FTR provision in isolation, claimant and his dependents would be obligated to complete relocation by July 10, 2022, one year after claimant's July 11, 2021, CONUS civil service reporting date.

Another FTR provision, however, modifies that time limit. Pursuant to FTR 302-2.10, if a transferring employee is furloughed to perform active military duty, the deadline for completing relocation is extended:

> If I am furloughed to perform active military duty, will I have to complete all aspects of the relocation within the time limitation?
>
> No, if you are furloughed to perform active military duty, the 1-year period to complete all aspects of relocation is exclusive of time spent on furlough for active military service.

41 CFR 302-2.10. Claimant has been on military furlough since July 2021.[3]

The NGA does not dispute that claimant's one-year time limit for completing relocation is deferred while he is on his current military duty. It argues, however, that this extension does not apply to claimant's family. It notes that, although FTR 302-2.9 sets a one-year deadline on relocation benefits for "[y]ou and your family member(s)," the language in FTR 302-2.10 providing an extension for military duty only references the employee, not the employee's dependents. That difference in language, the NGA argues, indicates that dependents are purposely excluded from the FTR 302-2.10 military duty extension.

The NGA's argument is inconsistent with the applicable JTR provisions that interpret and apply the FTR.[4] Chapter 5, section 3, of the August 2015 version of the JTR "prescribes

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[3] The NGA has recorded claimant as being in a leave-without-pay status, but, in the circumstances here, that is the same as military furlough. *See, e.g.*, 38 U.S.C. § 4316(b)(1)(A); *William Arnold Kristapovich*, CBCA 2390-RELO, 11-2 BCA ¶ 34,826, at 171,360; 71 Comp. Gen. 513, 515-16 (1992); 5 CFR 353.106(a).

[4] In support of its arguments, the NGA cites to the JTR issued on January 1, 2023, arguing that JTR 053712 (Jan. 2023), a portion of which supplements FTR 302-2.10, should be interpreted as limiting extensions of relocation benefits to the employee on military

a dependent's travel and transportation allowances incident to a PCS move." JTR 5576 (Aug. 2015). JTR 5584, titled "Time Limitation," is one of the subsections within chapter 5, section 3. Consistent with FTR 302-2.9 and -2.10, it provides that, although "[d]ependent travel must be completed within 1 year from the effective date of transfer," JTR 5584-A.2, "[f]or an employee who enters active military duty at any time before the 1-year period ends, the time spent in military service is not included in the 1 year." *Id.* 5584-A.3. To the extent that the NGA might argue that the sentence at JTR 5584-A.3 does not expressly mention "dependents" of the employee who is on military duty, that subsection is a part of JTR chapter 5, section 3, which, as noted above, addresses "a dependent's travel and transportation allowances." *Id.* 5576. The NGA's argument creating separate time limitations for the employee on military duty, on one hand, and his dependents, on the other, directly conflicts with JTR 5584-A.3. Accordingly, under JTR 5584-A.3, any extension on relocation benefits that applies to the employee because of military furlough also applies to the dependents.[5] The NGA's argument to the contrary is wrong. Claimant's dependents have not forfeited their return-to-CONUS relocation benefits.[6]

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duty and excluding dependents. However we might interpret JTR 053712, it does not apply to the claim here. The version of the JTR that governs a claimant's right to OCONUS return relocation benefits, which is enforceable because of claimant's compliance with the transportation or service agreement that claimant originally executed, is the one that was in effect when claimant's OCONUS tour of duty began. *Kenneth J. Dexter*, CBCA 3130-RELO, 13 BCA ¶ 35,236, at 172,998; *see Xavier F. Monroy*, CBCA 5676-RELO, 17-1 BCA ¶ 36,855, at 179,584 (Return rights "are created when the employee signs the initial agreement, and they vest when the employee fulfills his or her obligations under the initial agreement." (internal citation omitted)). Here, claimant signed his service agreement and began his tour of duty in Italy in August 2015. Accordingly, we look to the August 2015 version of the JTR to determine what rights claimant and his dependents have to return relocation expenses at the end of that OCONUS tour, rather than the JTR that was in effect when the NGA filed its briefing with the Board.

[5] Even if we were to apply the JTR in effect in July 2021, when claimant was supposed to report to his St. Louis PDS before beginning military duty, or the JTR issued on January 1, 2023, to which the NGA refers, we see nothing in either version of JTR 053712 that shows an intent to modify the dependent relocation travel entitlements set forth in JTR 5584 (Aug. 2015).

[6] In light of this disposition, we need not evaluate claimant's USERRA argument or the NGA's argument that we lack authority to consider the effect of USERRA on claimant's entitlements.

<u>Claimant's Entitlement to Continued NTS</u>

The FTR defines NTS, or "extended storage," as "[s]torage of household goods while an employee is assigned to an official station or post of duty to which he/she is not authorized to take or unable to use the household goods or is authorized in the public interest." 41 CFR 300-3.1. FTR 302-8.203 authorizes agencies to cover NTS costs throughout the duration of a transferred employee's OCONUS assignment as follows:

> Time limitations for extended storage of your HHG will be determined by your agency as follows:
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> (a) For the duration of the OCONUS assignment plus 30 days prior to the time the tour begins and plus 60 days after the tour is completed;
>
> (b) Extensions may be allowed for subsequent service or tours of duty at the same or other overseas stations if you continue to be eligible as set forth in § 302-8.200; and
>
> (c) When eligibility ceases, storage at Government expense may continue until the beginning of the second month after the month in which your tour at the official station OCONUS terminates, unless to avoid inequity your agency extends the period.

Id. 302-8.203. The NGA's supplement to the FTR eliminates any discretion that the agency might otherwise have for extending NTS, stating that "[n]on-temporary storage of HHG will be authorized for the length of the OCONUS tour," inclusive of extensions. Claim Attachment 12.

The NGA does not appear to dispute that FTR 302-2.10's military furlough time extension applies to claimant's NTS (even though FTR 302-2.10 does not expressly mention FTR 302-8.203(a)'s sixty-day deadline for ending NTS after the employee's return to the original PDS) or that claimant was granted and entitled to NTS. The NGA's sole argument in support of its decision to stop paying claimant's NTS is that, had claimant's dependents timely returned to St. Louis near claimant's July 11, 2021, St. Louis PDS report date, "it is more likely than not Claimant would not have incurred NTS fees" because his family would have removed the HHG from NTS at that time. Agency's Response at 7. The NGA notes, though, that it "is willing to work with Claimant on continued agency payment of NTS costs while he is on military orders provided Claimant provides clear notice that NTS costs would continue to be incurred after the return PCS and relocation of his dependents consistent with PCS orders." *Id.*

As previously discussed, claimant's family is entitled to the same relocation extension as claimant as a result of claimant's military duty. Accordingly, the family is not required to return to St. Louis while claimant is on military duty, undercutting the rationale of the NGA's sole defense to claimant's NTS challenge. Because the NGA has raised no other bases for challenging this claim, claimant is entitled to reimbursement of the costs he has incurred for his NTS.

Decision

The claim is granted.

Harold D. Lester, Jr.
HAROLD D. LESTER, JR.
Board Judge