



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

October 18, 2010

CBCA 2097-RELO

In the Matter of JOSE A. BAEZA

Jose A. Baeza, Gainesville, VA, Claimant.

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

DANIELS, Board Judge (Chairman).

Jose A. Baeza asks the Board to set aside, or at least prorate, the Drug Enforcement Administration's (DEA's) demand that he repay \$14,061.12 in relocation benefits the agency paid to him on the occasion of his transfer from Mexico City to Washington, D.C., in January 2009. We deny his request. The agency properly demanded repayment of the funds because Mr. Baeza's reasons for not fulfilling his agreement to remain in government service for twelve months after the date of the transfer were within his control and unacceptable to the agency.

Background

Before moving to Washington, Mr. Baeza signed a service agreement in which he "agree[d] to remain in the employ of the United States Government for a period of not less than twelve months after the date on which [he] report[ed] for duty at that duty station." The agreement provided further:

I agree that if I fail to fulfill the terms of this agreement by . . . voluntarily retiring . . . 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.

DEA then paid to him, or on his behalf, \$58,882.23. Most of this money covered the costs of his travel, and the movement of his household goods, from Mexico City to Washington. The agency also paid him \$14,061.12 in a miscellaneous expense allowance and reimbursement for his expenses of living in temporary quarters after arriving in Washington.

Nine months after the move, in October 2009, Mr. Baeza voluntarily retired from DEA. He says he knew that he was approaching retirement age and that he retired to accept a job with a company in the private sector.

Later, DEA demanded that Mr. Baeza repay the \$14,061.12 it had paid him for miscellaneous and temporary quarters subsistence expenses. The agency accepts responsibility for the remainder of the money it paid to him, or on his behalf, for his travel and transportation.

Discussion

By statute, an agency which transfers an employee from a post of duty outside the continental United States [CONUS] to a post within that area is authorized to pay relocation benefits to the employee. 5 U.S.C. §§ 5722(a)(2), 5724(d) (2006). Payment may be made, however, only after the employee --

agrees in writing to remain in the Government service for a minimum period of . . . 12 months after his appointment . . . unless separated for reasons beyond his control which are acceptable to the agency concerned. If the individual violates the agreement, the money spent by the Government for the expenses is recoverable from the individual as a debt due the Government.

Id. § 5722(b).

The Federal Travel Regulation, which implements this statute, reiterates the caution as to the ramification of violating the agreement, characterizing the consequence as a penalty. 41 CFR 302-2.14 (2008). DEA emphasizes to its employees, both in the agency's PCS [Permanent Change of Station] Foreign Assignment Relocation Handbook and on an internal website, the requirement to remain in service. The website specifically advises:

[V]oluntary retirement is not considered an event beyond the control of the employee. Voluntary retirement is an optional form of retirement (as opposed to mandatory or disability retirement); therefore, it is considered within the

control of the employee and is not acceptable to DEA as a basis for waiving relocation expenses.

The Government pays relocation expenses not only for an employee who is transferred from a post of duty outside CONUS to a post within that area, but also for an employee who relocates from a post of duty outside CONUS to his place of actual residence for the purpose of separation from government service. The benefits for a separating employee are more limited than those for a transferred employee, however. They do not include a miscellaneous expense allowance or reimbursement for expenses incurred while living in temporary quarters in CONUS. 41 CFR 302-3.101 tpls. C, F.

DEA has determined that because Mr. Baeza voluntarily retired within twelve months of his transfer to Washington, he did not separate for reasons beyond his control which were acceptable to the agency. Consequently, the money the agency spent for his move, beyond what it would have spent if he relocated for the purpose of separation from government service, is recoverable from him as a debt due the Government.

Mr. Baeza asks us to reject DEA's determination for several reasons. He urges us to consider his record of twenty-six years of service to the agency; his feeling that the transfer to Washington was an indication that he was being forced to retire, leading him to accept a job which was offered by a former DEA official; and the fact that the job he accepted lasted only three weeks, after which he was unemployed for six months. Mr. Baeza also asks that if we do not set aside the agency's determination, we prorate his debt so that he must repay an amount commensurate with the following fraction: number of days worked within the twelve months after transfer divided by number of days in twelve months. The proration would result in his having to repay less than one-fourth of the amount demanded.

The Board reviews an agency's discretionary determination, such as one as to whether an employee's separation was for reasons beyond his control and acceptable to the agency, to see whether the determination had a reasonable basis. *Fred L. Tribbitt*, CBCA 1737-RELO, 10-1 BCA ¶ 34,384; *David F. Lytal*, CBCA 1433-RELO, 09-1 BCA ¶ 34,090. We conclude that DEA's determination with regard to Mr. Baeza's separation from government service was consistent with the terms of the employee's service agreement and the agency's announced policy as to voluntary retirements. None of the matters as to which Mr. Baeza requests consideration have any bearing on this conclusion. Neither a record of long service, a feeling of being unwanted, nor a period of unemployment following retirement compels a finding that the employee's decision to retire was anything other than voluntary and therefore an unacceptable reason for not fulfilling the service agreement. *See Dale W. Shepherd*, GSBGA 16921-RELO, 06-2 BCA ¶ 33,361. Further, statute and

regulation do not contemplate any proration of a debt due the Government as a result of a violation of such an agreement.

Decision

Mr. Baeza is indebted to DEA in the amount of \$14,061.12.

STEPHEN M. DANIELS
Board Judge