



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

February 21, 2007

CBCA 460-RELO

In the Matter of MARILYN FOURNIER

Marilyn Fournier, Hanscom AFB, MA, Claimant.

Ralph Gaspard, Air Force Reserve Command, New Orleans, LA, appearing for Department of the Air Force.

PARKER, Board Judge.

Background

When Marilyn Fournier was transferred by the Air Force to New Orleans, Louisiana, in April 2004, she signed an agreement in which she promised that, in return for the Government's payment of her relocation expenses, Ms. Fournier would remain in Government service for at least twelve months unless separated for reasons beyond her control that would be acceptable to the agency. The agreement further provided that, in the event Ms. Fournier failed to serve the minimum amount of time, she would repay the Government the amount it spent on her relocation.

After her transfer, Ms. Fournier's husband was unable to find a suitable job in New Orleans so he decided to accept a job at Kirtland Air Force Base, New Mexico. On August 17, 2004, four months after her transfer, Ms. Fournier informed her supervisor that she was resigning her position effective September 4. Ms. Fournier moved to New Mexico to be with her husband and began looking for another job with the Federal Government. Unable to find something quickly, Ms. Fournier accepted a job with a contractor that provided services to the Air Force under contract. Five months later, she was rehired by the Government.

Ms. Fournier has asked the Board to review the Air Force's decision that she did not comply with the agreement she signed and, thus, must repay the Government for the amount spent on her relocation. As discussed below, we find that the Air Force's decision was correct.

Discussion

The Federal Travel Regulation (FTR) requires, as a condition of having the Government pay relocation expenses, that transferred employees agree in writing to remain in the service of the Government for twelve months following the effective date of the transfer, unless separated for reasons beyond their control that are acceptable to the agency. If an employee fails to comply with the agreement, he or she must reimburse to the Government all relocation costs. 41 CFR 302-2.12 - .14 (2004).

Ms. Fournier maintains that her husband's relocation caused her to be separated for a reason beyond her control that should have been acceptable to the agency. In cases involving an employee's violation of a service agreement, we have held that because the determination of whether a reason is beyond the employee's control and acceptable to the agency is a matter within the discretion of the agency, we will overturn an agency's determination only if it does not have a reasonable basis. *Amy Oestreich*, GSBICA 16489-RELO, 05-1 BCA ¶ 32,852 (2004). In this connection, we have upheld an agency's decision that an employee's resignation in order to accompany a transferred spouse to a new duty location, rather than completing his contractual service commitment, was not a separation beyond the employee's control. *John A. Bukowski*, GSBICA 14724-RELO, 99-1 BCA ¶ 30,200 (1998). We apply the same rule here. Although sometimes difficult, an employee's decision to quit his or her job in order to accompany a spouse to a new location is in the end a personal one, and it is within an agency's discretion to determine that such an act was neither beyond the employee's control nor acceptable to the agency.

Ms. Fournier also maintains that, although she worked for a contractor in New Mexico, she was still in "Government service" because she provided services under contract to the Government. The Air Force was correct in rejecting this argument. A contractor who performs services for the Government is not in Government service for purposes of complying with a service agreement.

In deciding whether an agency could by agreement require a transferred employee to remain in the service of a specific agency, rather than simply in Government service, the United States Court of Claims explored the meaning of the term "Government service":

The statute is clear and unambiguous on its face; however, we note from its legislative history that the requirement for remaining in Federal service was submitted in a report by the Bureau of the Budget which reads in part as follows:

In order to assure that the moving expenses are not paid to employees who do not intend to *continue working for the Government* after they have been moved, the bill provides that employees must agree in writing to *remain in Government service* for at least 1 year after they have moved

. . . .

Section 5721(4) [of title 5 U.S.C.] for the purpose of the subchapter and of § 5724(i) defines “Government” to mean the Government of the United States; *a fortiori*, to remain in “Government service” requires only that the employee *remain in the service of the Government* of the United States for twelve months after his transfer.

Finn v. United States, 428 F.2d 828, 831-32 (Ct. Cl. 1970) (emphasis added). When Ms. Fournier resigned from her job in the Air Force, she did not “continue working for the Government” and thus did not “remain in Government service” for purposes of complying with her service agreement. The fact that she found employment with a firm that contracts with the Government did not change that fact.

Finally, Ms. Fournier argues that, under Air Force regulations, she should have been granted leave without pay while she looked for Government employment in New Mexico. Had she been granted such leave, Ms. Fournier maintains, she would have found a Government job while on leave and, thus, would have remained in Government service. We reject this contention. First, there is nothing in the record to indicate that Ms. Fournier requested leave without pay prior to resigning from Government service. Second, even assuming that Ms. Fournier is correct about her right to leave without pay (and we do not decide that she is; this Board does not decide cases involving pay and leave issues), her assertion that she would have found Government employment during this period is speculative. Even though Ms. Fournier ultimately did find a job with the Government, we cannot reconstruct with any certainty what would have happened had she been granted leave and had not first worked as a contractor.

Decision

The agency reasonably decided that Ms. Fournier should repay the cost of her relocation because she failed to comply with her agreement to remain in Government service for twelve months after her transfer. Ms. Fournier's claim is thus denied.

ROBERT W. PARKER
Board Judge