



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

December 1, 2011

CBCA 2494-RELO

In the Matter of SUSAN L. WALOR

Susan L. Walor, Pataskala, OH, Claimant.

Vijay Ahir, Accounting Operations Center, National Park Service, Department of the Interior, Herndon, VA, appearing for Department of the Interior.

POLLACK, Board Judge.

Susan L. Walor (claimant), a former employee of the Department of the Interior (DOI), seeks a decision by the Board regarding the actions of DOI requiring her to repay a bill of collection for \$19,029.50, which arose out of her move from Indiana to Alaska to take a position as a dispatcher at Denali National Park, Alaska. It is undisputed that Ms. Walor did not satisfy the one year commitment set out in her service agreement, as she resigned prior to that time. Ms. Walor here seeks abatement of the bill of collection on the basis that her decision not to remain at Denali for the time specified was beyond her control and thus satisfies the criteria for relief.¹

Background

In late November 2010, Ms. Walor took a position as a dispatcher with DOI at Denali National Park in Alaska. As part of the move she signed a relocation agreement which put conditions upon her retention of any relocation expenses provided to her. The agreement in

¹ The Board notes that it is aware of a separate bill of collection for \$1050.74, which appears to also arise from the move to Denali. That sum, however, was not addressed in Ms. Walor's claim letter, so we do not decide its disposition in this decision. To the extent, however, that our rationale is applicable to the other sum, we urge DOI to recognize that fact.

pertinent part tracked the law and regulations and provided that if she failed to remain with the Federal Government for at least twelve months, any money expended by the Government on account of such travel and transportation would be recoverable from her as a debt to the United States. The agreement, however, also provided that if Ms. Walor was separated from employment for reasons beyond her control and acceptable to the National Park Service, prior to completion of the period of service specified in the agreement, the cost of travel and transportation would be paid by the Government.

As part of her transfer, Ms. Walor was provided temporary housing by DOI when she first arrived at Denali. When she took the position, she had been told that she could use the temporary housing for three months, at which point she would have to secure permanent housing. She anticipated that given three months, she would certainly secure rental housing. She was not told by DOI that housing was not available in the surrounding vicinity or that she might have to look as far away as Anderson, Alaska, for permanent lodging.

The evidence shows that Ms. Walor made a diligent and extensive search for housing, including looking at locations as far away as Anderson, Alaska; and suitable housing simply was not there. When she was unable to find housing at the end of three months, DOI did allow her to extend the temporary housing for another three months. However, she was told at that time that no further extensions would be granted. Armed with the additional time, Ms. Walor continued to seek a permanent residence, but again, with no success.

At approximately the five month point of her stay at Denali (there faced with the fact that temporary housing would end within approximately a month), Ms Walor made the decision to seek other employment. She explained that with no prospect of a place to live, she needed to take that action. She received an offer for a position. She choose to take that position and notified DOI that she was leaving. Her one year period had not yet expired.

In supporting her contention that housing was not available, Ms. Walor has provided substantial and convincing evidence. She not only described the situation in letters to the Board and to DOI, but also provided two letters from Ms. Nicole Vaught, a park service dispatcher at Denali, who had taken her position at about the same time as did Ms. Walor. More to the point, Ms. Vaught was concurrently seeking housing during the time in issue and having the same problems as Ms. Walor. In a letter dated March 7, 2011, to DOI, Ms. Vaught detailed her futile search for housing in the area. Put simply, from the information provided in her letter, there appeared to be no suitable housing available within a several-hour drive from the park. Moreover, attached to Ms. Vaught's letter was a list of rental properties that had been provided to her as potentially available. Ms. Vaught annotated a number of the listed properties as to conditions that made them either unacceptable or unavailable. Among the issues were no kitchen facilites, lack of call-backs from owners,

uncertainties from owners as to whether to rent, and distance from Denali. Additionally, in a letter of September 27, 2011 (submitted to support Ms. Walor's claim), Ms. Vaught again reiterated the lack of housing and then added that had it not been for Ms. Walor's resigning her position, Ms. Vaught would not have been offered a permanent housing unit by DOI. As she stated, that housing allowed her to remain in her job. Ms. Vaught then concluded in her support letter that the housing situation was, and remains untenable at Denali National Park. Ms. Walor was never offered a permanent unit by DOI.

In contrast to Ms. Walor's detailed description of the situation, DOI provided no specific information showing the availability of properties, nor did it challenge the factual assertions of Ms. Walor.

Discussion

An agency may pay relocation expenses to an employee who transfers from one duty station to another in the interest of the Government. 5 U.S.C. § 5724(a) (2006). The reimbursement, however, is conditional upon the employee agreeing to remain in government service for a specified time. Directly in issue in this claim, should the employee not remain in government service for twelve months following the transfer, the Government can recover the money provided as a debt due the United States. That obligation, however, can be excused where the reason for the early separation is found, at the agency's discretion, to be beyond the employee's control. 5 U.S.C. § 5724(i); 41 CFR 302-2.14 (2011). This Board and our predecessor in considering these matters has held that the exercise of the agency's discretion will only be overturned if the agency does not have a reasonable basis for its decision. The burden of proving that is on the employee. *Donavan L. May*, CBCA 2188-TRAV, 11-1 BCA ¶ 34,658; *Jeanne Hehr*, GSBCA 16936-RELO, 06-2 BCA ¶ 33,431; *Thomas M. Stan*, GSBCA 16679-RELO, 05-2 BCA ¶ 33,063.

This case presents one of those limited situations where we find that the agency decision does not provide a reasonable basis for concluding that circumstances in issue were not beyond the employee's control. In the case before us, on unrefuted and substantial evidence, it is clear that absent the Government providing permanent housing, Ms. Walor was facing a situation where she simply had nowhere to live. This is not a case, such as *Thomas W. Burt*, GSBCA 14537-RELO, 98-2 BCA ¶ 29,751, where the claimant contended that suitable housing was not available, but agency evidence showed that thirteen other employees transferred into the area at around the same time and all found housing. Nor is this case like *Ms. Roberta B.*, GSBCA 15320-RELO, 01-2 BCA ¶ 31,565, where the claim of the non-availability of housing proved to be based upon the employee's preferences, value judgment, and taste. Here, Ms. Walor ably tried to find housing, but to no avail. Moreover,

even though her pay grade made purchasing a house a very tenuous alternative, she even tried that, with no success.

In hindsight, one could ask why Ms. Walor accepted the assignment without a guarantee of housing. However, when we look at matters prospectively, as she logically would have, there was no reason for her to expect that she would not be able to find lodging. Clearly, given the actual situation, DOI was remiss in not advising her of the potential problems. As she stated, had DOI advised her of the problem in finding suitable housing in the area, she would not have made the decision to transfer.

We do not find that Ms. Walor made a voluntary choice to separate. Her situation was untenable and clearly beyond her control. We further recognize that soon after Ms. Walor resigned, DOI did in fact provide lodging to Ms. Vaught, who was otherwise in a similar predicament. No such offer, however, was made to Ms. Walor.

Accordingly, we find the decision of DOI in this case to be unreasonable and an abuse of discretion. While an employee in relocating takes the risk that he may not find housing that is to his liking, an employee, absent reason to know, does not take the risk that no minimally suitable housing will be available. The bill of collection should be discharged.

HOWARD A. POLLACK
Board Judge