



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

February 27, 2009

CBCA 1433-RELO

In the Matter of DAVID F. LYTAL

David F. Lytal, Arlington, TN, Claimant.

James E. Hicks, Office of Chief Counsel, Drug Enforcement Administration, Department of Justice, Alexandria, VA; and Sheryl Butler Jamison, Office of Chief Counsel, Drug Enforcement Administration, Department of Justice, Springfield, VA, appearing for Department of Justice.

McCANN, Board Judge.

Claimant, David F. Lytal, is a former employee of the Drug Enforcement Administration (DEA). He has asked this Board to review the agency's determination that he must return \$3734.28 in previously-incurred relocation costs as the result of his premature separation from federal employment.

Background

In the spring of 2005, claimant began a tour of duty as the Director of the DEA International Law Enforcement Academy in Bangkok, Thailand. In October 2007, he requested an early departure from his tour and his return to the United States. He indicated that his son was ill and he was needed back in the United States to take care of him. The DEA's Career Board approved Mr. Lytal's request for curtailment and reassigned him to Headquarters (HQ) in Washington, D.C.

On November 5, 2007, claimant informed Mr. May of DEA's Transportation Management Unit that he would be retiring within a year of returning to the United States. Mr. May replied that when claimant signs a DEA 114 (Service Agreement - Domestic

Transfer) he agrees to remain employed with the Federal Government for twelve months. He indicated that if claimant left federal employment before twelve months had elapsed he would be required to reimburse the Government for some of the costs of his permanent change of station (PCS) move.

On November 15, 2007, claimant again indicated to Mr. May that he intended to retire from the DEA upon his return to the United States. Mr. May responded that unless claimant's return travel to the United States was for the purpose of separating from the service, claimant needed to sign a DEA 114 agreeing to remain in government service for at least twelve months. He also indicated that if Mr. Lytal retired while at a foreign post of duty he would be entitled to certain specified benefits. These benefits differed from those that he would be entitled to under a PCS move.

On November 21, 2007, claimant signed the DEA 114 service agreement. In this agreement, he agreed to remain in the employment of the Government for twelve months or repay the Government for all costs paid towards his relocation expenses. In February 2008, claimant transferred to HQ in Washington, D.C. He retired from federal service in June 2008, before the twelve-month period had elapsed. The DEA determined that claimant must repay \$3734.28 in travel expenses as a result of his not abiding by the terms of the service agreement. Claimant has asked that this Board to review that determination. Claimant does not question the amount of the determination, only the correctness of it.

Discussion

When a government employee is transferred in the interest of the Government he or she is entitled to be reimbursed for relocation costs. 5 U.S.C. § 5724(a) (2000). The Federal Travel Regulation (FTR) states that reimbursement for such relocation costs is conditioned upon an employee entering into a service agreement to remain in government service for a period of not less than twelve months. 41 CFR 302-2.13 (2007). If an employee fails to remain in government service for the required period he or she is subject to the following penalty:

Will I be penalized for violation of my service agreement?

Yes, if you violate a service agreement (other than for reasons beyond your control and which must be accepted by your agency), you will have incurred a debt due to the Government and you must reimburse all costs that your agency has paid towards your relocation expenses. . . .

The claimant has the burden of proof in a relocation case. *Gary Twedt*, GSBCA 16905-RELO, 06-2 BCA ¶ 33,433. In his December 1, 2008, claim letter to the Board, claimant enumerates seven specific reasons why the DEA's determination should not stand. These reasons are as follows:

1. My request to curtail my tour was requested by DEA HQ after I had put my name in for a position in the US and was not instigated by me.
2. My request to curtail my tour was to return after finishing up with my original three-year tour (April 30, 2008).
3. I refused to sign the tour renewal agreement until I was advised by the head of the DEA Transportation Unit who sent me an e-mail advising me to sign the renewal agreement even though I was retiring because DEA usually did not request reimbursement in my situation.
4. DEA HQ never verified the reason for my request to [return to] the US, but originally denied the request and then decided to move me back earlier than my request, even knowing that I was going to retire after being informed that DEA would not move me to a location where I could take care of my son.
5. During the DEA HQ review of my appeal of this repayment of Permanent Change of Station (PCS) funding, DEA HQ still did not contact anyone to verify my reason to request a return to the US and the statements about me and my situation were incorrect.
6. DEA should have been required to pay for my move from a foreign post to a domestic retirement post.
7. DEA was moving my spouse, a DEA employee, back to the US from Bangkok on a PCS move and I would have been a retired dependent on her orders had DEA not required me to return earlier than the end of my tour.

Six of the seven reasons are simply not relevant to claimant's obligations under the service agreement. Only reason three pertains to the service agreement. It alleges that

claimant refused to sign the service agreement until he was advised that the DEA usually did not request reimbursement of travel costs in his situation. This reason is unsupported by the record and flatly denied by the DEA. We find it to be without merit. However, even if it had merit, it would not constitute a valid ground in support of claimant's position.

This Board has recognized:

It is within an agency's discretion to determine whether a separation from service which appears to be voluntary was for a reason beyond the employee's control and acceptable as a reason for not fulfilling the terms of a service agreement. We will not question the agency's exercise of its discretion so long as it has a reasonable basis. *Melinda K. Kitchens* GSBCA 16639-RELO, 05-2 BCA ¶ 33,062; 46 Comp. Gen. 724 (1967); Comp. Gen. Dec. B-174823 (Jan. 26, 1972).

Paula A. Shimata, CBCA 1135-RELO, 08-2 BCA ¶ 33,901, at 167,775. Accordingly, our inquiry is limited to whether the agency properly exercised its discretion.

We find no abuse of discretion here. When claimant resigned from federal service he was well aware of the requirements of the separation agreement. There is nothing in the record indicating that, at the time of his retirement, claimant made any inquiry regarding whether he would be held to the terms of the service agreement. At that time he did not assert that his separation was for a reason beyond his control. Apparently, claimant simply took the chance that the DEA would not enforce the agreement. He lost that gamble.

The DEA did not abuse its discretion, and the claimant has failed to sustain his burden of proof that he is entitled to retain the travel costs.

Decision

The claim is denied.

R. ANTHONY McCANN
Board Judge