



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

August 23, 2011

CBCA 2400-RELO

In the Matter of DAVID S. GARBER

David S. Garber, Washington, DC, Claimant.

Scott L. Mabry, Finance Officer, Bureau of Ocean Energy Management, Regulation and Enforcement, Department of the Interior, Washington, DC, appearing for Department of the Interior.

DRUMMOND, Board Judge.

Claimant, David S. Garber, a former employee of the Department of the Interior Minerals Management Service¹ (agency), received relocation benefits for a permanent change of station move from Madison, Wisconsin, to New Orleans, Louisiana, in 2009. Claimant subsequently resigned his position after ten weeks in New Orleans, citing work and family issues. The agency holds claimant liable for the relocation costs expended by the agency, finding unacceptable the reasons put forward by claimant to explain his resignation. Claimant contends that the agency should have waived his indebtedness.

Claimant did not fulfill his service agreement obligations. The agency reasonably declined to accept claimant's reasons as a basis to forego his debt. Claimant is liable for all costs expended by the agency for his relocation.

Background

In 2009, claimant signed an employment agreement containing a one-year commitment to remain in government service, with the acknowledgment of liability if the

¹ Now the Bureau of Ocean Energy Management.

commitment was not fulfilled, unless the separation was for reasons beyond his control and acceptable to the agency. The agency authorized claimant to recover relocation benefits incurred in the change of his permanent duty station. The agency paid relocation expenses for claimant. Claimant reported to his new duty station on April 28, 2009. Claimant resigned his position effective July 3, 2009, thereby ending his service with the Government.

Claimant has put forward reasons he maintains were beyond his control which led to his resignation and which the agency should have accepted. He details the health conditions of his parents, which he contends became worse after he relocated. In addition, he describes the work conditions as strict and inflexible, and alleges that he was not afforded the alternative work schedule that he had requested. The agency reviewed the information provided by claimant and determined that his justification for resigning is not acceptable. The agency pursued recovery of the debt.

Discussion

Pursuant to statute, the Government may pay relocation expenses when an employee transfers from one duty station to another in the interest of the Government. 5 U.S.C. § 5724(a) (2006). Reimbursement for such relocation expenses is conditioned upon an employee entering into an agreement to remain in the service of the Government for a period of not less than twelve months, while accepting liabilities if the employee fails to fulfill the terms of the agreement. *Id.* § 5724(i); *see also* 41 CFR 302-2.13 (2009). In particular, as specified in the agreement and regulations:

[I]f 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

41 CFR 302-2.14.

“The claimant has the burden of proof in a relocation case.” *Randy C. Davidson*, CBCA 2044-RELO, 11-1 BCA ¶ 34,750 at 171,055. Our predecessor board in deciding these matters, the General Services Board of Contract Appeals, held that “unless an employee can show that his resignation was effectively forced by the agency without reasonable grounds, the resignation will be presumed to have been voluntary, and if it occurs within twelve months of a transfer, the agency may recover as a debt the expenses paid for the employee’s relocation.” *Kerry Flood*, GSBICA 16806-RELO, 06-1 BCA ¶ 33,279, at 164,999.

This Board has recognized that “[i]t 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.” *Paula A. Shimata*, CBCA 1135-RELO, 08-2 BCA ¶ 33,901, at 167,775; *see also Erik E. Ehrenborg*, CBCA 1678-RELO, 10-1 BCA ¶ 34,370. We will not question the agency’s exercise of its discretion so long as it has a reasonable basis. *Carlos N. Lacy*, CBCA 1059-RELO, 08-2 BCA ¶ 33,887. Accordingly, our inquiry is limited to whether the agency reasonably exercised its discretion.

The record does not demonstrate the unreasonableness of the agency’s decision. The health conditions of claimant’s mother and father and his personal beliefs concerning the new work environment “do not compellingly demonstrate that the resignation was beyond the control of the claimant or make unreasonable, much less arbitrary or capricious, the agency’s decision deeming the reasons unacceptable. The claimant has not satisfied his burden to obtain relief.” *See Ehrenborg*, 10-1 BCA at 169,723.

Decision

The claim is denied.

JEROME M. DRUMMOND
Board Judge

