



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

December 6, 2013

CBCA 3424-RELO

In the Matter of WILLIAM G. STERLING

William G. Sterling, Cincinnati, OH, Claimant.

James E. Platske, Director, Southeast Region, Office of Air and Marine, Customs and Border Protection, Department of Homeland Security, Aguadilla, PR, appearing for Department of Homeland Security.

DANIELS, Board Judge (Chairman).

The Department of Homeland Security asks that we reconsider a portion of our decision in *William G. Sterling*, CBCA 3424-RELO (Oct. 18, 2013). Mr. Sterling is an air interdiction agent with the department's Customs and Border Protection (CBP), stationed at Aguadilla, Puerto Rico. We held that CBP appropriately did not pay the expenses Mr. Sterling incurred in relocating to Puerto Rico upon his appointment to government service, but that the agency must pay the expenses he incurs in returning to the United States upon his announced separation from that service.

How can this be, the agency asks, when payment for both moves is governed by the same statute? The answer can be found in the language of the statute itself.

This law, 5 U.S.C. § 5722(a) (2006), says that agencies –

may pay . . .

(1) travel expenses of a new appointee and transportation expenses of his immediate family and his household goods and personal effects from the place

of actual residence at the time of appointment to the place of employment outside the continental United States; [and]

(2) these expenses on the return of an employee from his post of duty outside the continental United States to the place of his actual residence at the time of assignment to duty outside the continental United States.

The law also says that agencies must, in implementing this authorization, follow regulations prescribed by the Administrator of General Services. The request for reconsideration ignores this last part of the statute, which is key to our decision.

With regard to the move of a new appointee to his initial assignment, the regulations, known as the Federal Travel Regulation (FTR), state that an agency “may or may not pay” relocation benefits. 41 CFR 302-3.2 (2007). CBP informed Mr. Sterling, through the vacancy announcement to which he responded, that it would not pay the expenses an individual would incur in relocating to his first assignment. We consequently held that the agency’s position that it would not cover his expenses was permissible and appropriate.

As to an employee’s move back to the United States upon his separation from government service, however, the FTR has a different provision which states that once the employee has completed his duty overseas, his “agency *must* pay one-way transportation expenses for you, for your family member(s), and for your household goods.” 41 CFR 302-3.300 (2012) (emphasis added). As we explained earlier, this regulatory provision, unlike the one regarding payment of the expenses a new appointee incurs when moving to a first post of duty outside the continental United States, is not permissive.

The agency complains that our conclusion is inconsistent with one we reached in *Wilberto M. Sanchez*, CBCA 3397-RELO, et al., 13 BCA ¶ 35,409, and that CBP has not budgeted for the implications of our decision. Neither of these is a valid reason for changing the determination we made earlier.

In *Sanchez*, we considered claims by two CBP employees who, like Mr. Sterling, had moved to Puerto Rico to assume positions with CBP. One of the employees had asked to be reimbursed for expenses he might incur in returning to the United States. We held that his claim was premature because he continued to work in Puerto Rico. We suggested that these expenses would not be appropriate for reimbursement once he did decide to separate from government service, but on reconsideration, we made clear that this suggestion was not a determination of the matter: “If and when the claim for return travel is properly put before us for review, . . . we will consider that claim.” *Matthew C. Hawk*, CBCA 3399-RELO, 13

BCA ¶ 35,410. *Sterling*, which was issued after the reconsideration in *Hawk*, is the first case in which we did issue a definitive ruling on the matter.

If CBP did not include in its budget funds for reimbursing Mr. Sterling and other employees who may separate from government service while stationed overseas, that is unfortunate, but it is not cause for interpreting the law differently from its clear intent.

STEPHEN M. DANIELS
Board Judge