



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

2

September 10, 2013

CBCA 3397-RELO, 3399-RELO

In the Matters of WILBERTO M. SANCHEZ and MATTHEW C. HAWK

Wilberto M. Sanchez, Aguadilla, PR, Claimant in CBCA-3397-RELO.
Matthew C. Hawk, Aguadilla, PR, Claimant in CBCA 3399-RELO.

Johnny Morales, Director, Air Operations, Caribbean Air and Marine Branch, Customs and Border Protection, Department of Homeland Security, Aguadilla, PR, appearing for Department of Homeland Security.

WALTERS, Board Judge.

The Board was asked to review related cases involving two claimants, both employees of the Department of Homeland Security, Customs and Border Protection (CBP), stationed in Aguadilla, Puerto Rico. For the reasons explained below, we deny their claims for reimbursement of relocation expenses incurred. As to other claims the two claimants have asserted, we find them either premature, unsupported, or beyond the Board's authority or jurisdiction.

Background

The first claimant, Michael C. Hawk (CBCA 3399-RELO), in late 2008, applied to be an Air Interdiction Agent with CBP in response to vacancy announcement MHCAMDE-225340-JMC. The announcement, which advertised a number of available positions in various locations, expressly stated: "Relocation expenses **will not** be paid." Aguadilla, Puerto Rico, was not listed in that announcement as a possible duty location. Nevertheless, Mr. Hawk was offered a position by CBP in Aguadilla. Mr. Hawk's official personnel file indicates that, at the time of his application to CBP, he was a resident of Tennessee and that,

prior to this position, Mr. Hawk was not a CBP employee. His only prior federal service had been with the United States military, and his tenure with the military ended more than a decade earlier, in 1997. Mr. Hawk commenced duty with CBP on May 24, 2010.

Before moving to Puerto Rico and before purchasing airline tickets, Mr. Hawk contacted an individual at CBP, presumably a human resources official, to “double-check” that he would be “responsible for [his] own travel.” At that time, the individual confirmed that Mr. Hawk would be responsible for the costs of his travel to Puerto Rico. Consistent with that confirmation and the vacancy announcement, CBP did not reimburse Mr. Hawk for his relocation costs. Upon assuming the CBP position in Puerto Rico in May 2010, Mr. Hawk was not asked to sign a service agreement that would commit him to remain in that position for any particular length of time and that would provide for reimbursement of relocation costs contingent on his fulfillment of the service term. In July of 2012, however, Mr. Hawk requested and was authorized to take home leave from July 26 to August 10, 2012, back to his home in Tennessee. CBP reimbursed him for his travel costs between Puerto Rico and Tennessee as overseas tour renewal (OTR) travel. Mr. Hawk was not asked to execute a service agreement in connection with this OTR travel.

The second claimant, Wilberto M. Sanchez (CBCA 3397-RELO), a resident of Orlando, Florida, also applied to be an Air Interdiction Agent with CBP in response to a vacancy announcement, WAS-135562-OCA/PN, in 2008. That announcement, like the one to which Mr. Hawk responded, listed multiple duty locations where positions may be filled but, unlike Mr. Hawk’s announcement, did include Aguadilla, Puerto Rico, as a possible position location. As with Mr. Hawk’s vacancy announcement, the announcement to which Mr. Sanchez responded stated: “Relocation expenses will not be paid.” Mr. Sanchez was offered, and accepted, a position at Aguadilla and began duty with CBP on June 9, 2008. Like Mr. Hawk, prior to assuming this position, Mr. Sanchez was not a CBP employee, and his only previous federal service had been with the United States military. Mr. Sanchez’s military service ended in 2007. Consistent with the vacancy announcement and its treatment of Mr. Hawk, CBP did not pay Mr. Sanchez for the costs he incurred in relocating to Puerto Rico. Mr. Sanchez, like Mr. Hawk, was not asked to sign a service agreement committing him to remain a CBP employee in Puerto Rico for any particular length of time. In July 2012, Mr. Sanchez also requested and, on August 1, 2012, was authorized to take home leave stateside to his home of residence in Orlando. He did so from August 18 to September 5, 2012. As it had with Mr. Hawk, CBP also reimbursed him for the expenses incurred in traveling to and from the continental United States (CONUS) and did so as OTR travel. Like Mr. Hawk, Mr. Sanchez was not asked to execute a service agreement in connection with this OTR travel. Both Mr. Hawk and Mr. Sanchez continue to be CBP employees, and neither has tendered a resignation to the agency.

In a letter dated February 14, 2013, addressed to CBP's Office of Chief Counsel in Washington, D.C., counsel on behalf of both Mr. Hawk and Mr. Sanchez asserted that both claimants should have been reimbursed for their initial relocation expenses from their CONUS residences to Puerto Rico. By letter dated May 10, 2013, an assistant chief counsel for CBP finally responded, maintaining that the vacancy announcements to which both claimants responded precluded such reimbursement. Both claimants seek the Board's review of the agency's decision. The claim of Mr. Sanchez was docketed with the Board on May 29, 2013. Mr. Hawk's claim was docketed on June 7, 2013. The two matters have been consolidated for the Board's review.

In April 2013, Mr. Sanchez submitted two memoranda to CBP requesting a lateral reassignment (i.e., transfer) to a CONUS duty station – one memorandum requesting a funded lateral reassignment and one memorandum requesting an unfunded lateral reassignment. Mr. Sanchez has not received authorization for a funded transfer. As to the circumstances prompting this dual memoranda submission, it is not clear from the record whether this was done at the suggestion of anyone at CBP. In response to his request for an unfunded transfer, CBP informed him via e-mail that, if he were still interested in an unfunded transfer, he would need to execute a memorandum documenting his understanding that the transfer would be voluntary and would be unfunded. To that end, the e-mail message included a template memorandum for his use. On June 28, 2013, Mr. Sanchez submitted a signed memorandum using that template. Recently, CBP approved an unfunded transfer to Virginia for Mr. Sanchez on that basis.

In his initial filing with the Board, Mr. Mr. Hawk, in addition to seeking reimbursement of \$70,000 for his initial costs of relocation to Puerto Rico, seeks another \$70,000 in anticipated travel return expenses to his CONUS residence. He also seeks \$5000 in legal fees and \$11,500 for lost home leave. All amounts presented appear to be estimates, and Mr. Hawk provides no backup or explanation for their derivation.

Mr. Sanchez, in terms of his costs to relocate from his CONUS residence to Puerto Rico, requests reimbursement of \$4000 for the costs of shipping his personal vehicles, \$25,000 for the transportation of household goods, \$5000 for plane tickets purchased for himself and his family, and \$9000 "per diem estimate (45 days counting house-hunting)" in Puerto Rico (which we take to have been incurred in 2008, when Mr. Sanchez relocated to Puerto Rico). He also seeks \$22,000 for denied home leave. These all are estimated figures, furnished without backup documentation or further explanation. Mr. Sanchez, also without backup documentation, requests \$2000 for "legal estimate" (which the Board understands as estimated legal fees) and \$16,000 "per diem estimate (45 days counting house-hunting)" in the "DC-Metro area" (costs the Board supposes may be incurred if and when Mr. Sanchez proceeds with his contemplated transfer to the CBP CONUS position in Virginia).

Discussion

Both Mr. Sanchez and Mr. Hawk seek a determination from the Board of their entitlement to home leave. Such determinations are beyond this Board's jurisdiction and fall within the purview of the Office of Personnel Management. *See Jorge J. Martinez*, CBCA 2265-RELO, 11-1 BCA ¶ 34,704, at 170,900 (citing *Oscar G. Rivera*, GSBCA 16332-TRAV, 04-2 BCA ¶ 32,735, at 161,913). Similarly, their requests for attorney's fees must be denied, as there is no authority for reimbursement of attorney fees in a matter like this involving a claim for relocation costs. *Everett L. Butler*, CBCA 1882-RELO, 10-1 BCA ¶ 34,427; *Dannette Wood*, CBCA 1681-C(1393-RELO), 09-2 BCA ¶ 34,295; *Dennis Nielsen*, GSBCA 15981-RELO, 03-1 BCA ¶ 32,150 (2002); *see also Jerome A. Dossall*, GSBCA 16244-RELO, 04-1 BCA ¶ 32,464 (2003).

The principal argument advanced for both claimants is that CBP is required to reimburse them for the relocation expenses they incurred in their initial moves to Aguadilla, Puerto Rico. The governing statute, 5 U.S.C. § 5722 (2006), as the agency correctly observes, contains only permissive language ("may") and does not mandate reimbursement of relocation costs for an overseas assignment. The implementing regulations likewise indicate that it is within the agency's discretion to provide relocation benefits in connection with an outside the continental United States (OCONUS) appointment. Under the provisions of the Federal Travel Regulation (FTR) in effect both in 2008, when Mr. Sanchez was appointed, and in 2010, when Mr. Hawk was appointed, a "new appointee" is defined by the FTR as either: "(a) An individual who is employed with the federal Government for the very first time . . . [or] (b) An employee who is returning to the Government **after a break in service.**" 41 CFR 302-3.1 (emphasis added). Messrs. Hawk and Sanchez both were "new appointees," because they both were employed by CBP after a break of several years (and, in Mr. Hawk's case, more than a decade) in their federal service. The regulations make plain that an agency "**may or may not pay or reimburse** [a "new appointee" for his incurred] **relocation expenses,**" 41 CFR 302-3.2 (emphasis added), and that only "**if**" the agency "authorizes . . . allowances for relocation" must it pay certain enumerated categories of expense. 41 CFR 302-3.4 (emphasis added).¹ Further, although the regulations call for an

¹ Reimbursement of other categories of expense, including notably the shipment of privately owned vehicles to an overseas post, is discretionary with the agency, even if the agency elects to allow relocation cost reimbursement. 41 CFR 302-3.2, tbl. B, col. 2. For yet other types of cost, e.g., house hunting trips, reimbursement is not even permissible as part of relocation benefits for new appointees. 41 CFR 302-3.3.

agency to “require [an] employee to **sign the service agreement** prior to his/her relocation” to an overseas assignment, 41 CFR 302-3.509 (emphasis added), they also make clear that service agreements are only necessary “**if** the employee is receiving reimbursement for relocation travel expenses.” 41 CFR 302-3.503 (emphasis added). Here, in both instances, the agency elected not to extend relocation reimbursement, and expressly advised Messrs. Hawk and Sanchez of this election by the terms of the position announcements to which they responded.

Likewise, in terms of return travel reimbursement, whereas under 41 CFR 302-3.510 and .512, return travel and transportation for both the employee and members of his immediate family would be mandatory upon completion of an “agreed period of service,” *Martinez*, 11-1 BCA at 170,901, this would not be the case where, as here, there was no service agreement in light of the agency’s determination not to extend relocation benefits in conjunction with the overseas assignments. Neither claimant would be entitled to return travel under these circumstances. Moreover, Mr. Hawk’s claim for return travel is premature in any event and should be dismissed, since he continues in his assignment in Puerto Rico and has yet to incur any actual cost to return to his CONUS residence. *See Charles Wright*, CBCA 3484-RELO (Aug. 22, 2013).

Mr. Sanchez, who has not sought return travel reimbursement, instead claims entitlement to a funded lateral transfer to a new CONUS duty station in Virginia. Apparently, from his claim for anticipated house hunting costs, the duty station in Virginia is located in the Washington, D.C. area. In this regard, as noted by our predecessor in considering these claims, the General Services Board of Contract Appeals (GSBCA), however, lateral transfers are presumed to be in the interest of the employee and do not warrant payment of relocation expenses, even where the transfers are the result of vacancy announcements. *See Quentin P. McColgin*, GSBCA 14349-RELO, 98-1 BCA ¶ 29,664 (citing *Michael S. Maram*, B-259251 (Sept. 1, 1995)); *see also Glenda F. Wall*, CBCA 3230-RELO (Aug. 26, 2013). Mr. Sanchez fails to provide evidence that would overcome this presumption. To the contrary, his execution of a memorandum confirming the voluntary nature of the transfer and his agreement that it would be unfunded would indicate that the transfer to Virginia is in his interest and not that of the Government.

Decision

Claimants' claims for reimbursement of relocation expenses incurred in moving to Puerto Rico are denied. Mr. Hawk's claim for return travel would also be denied were it ripe for decision, but we dismiss that claim as premature. Mr. Sanchez's claim for a funded lateral transfer to Virginia is denied for the reasons stated above.

The other claims raised by the two claimants are denied, either because they involve costs that are not authorized by statute or regulation (i.e., legal fees), are disallowed by regulation, even where relocation expenses have been authorized (i.e., the expense of house hunting trips), or dismissed, because they are outside the Board's jurisdiction (i.e., denied home leave).

RICHARD C. WALTERS
Board Judge