



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

December 9, 2014

CBCA 3751-TRAV

In the Matter of JAMES H. PLACE

James H. Place, Vilseck, Germany, Claimant.

Iлона M. Keller, APO Area Europe, appearing for Department of the Army.

GOODMAN, Board Judge.

Claimant James H. Place is a civilian employee of the Department of the Army. He has asked this Board to review the agency's determination to invalidate his initial service agreement that he entered into when he became a civilian employee after retiring from the military.

Factual Background

In 2007 claimant was a member of the uniformed military. He was issued orders for a permanent change of station (PCS) from Fort Levenworth, Kansas to Naples, Italy. In July 2010, while claimant was still officially in the military service, but on military leave prior to retirement, he was offered and accepted employment as a civilian employee of the agency—a Military Training Specialist—in Heidelberg, Germany, effective September 27, 2010. Because claimant was stationed with the U.S. Army NATO Brigade in Naples in Italy, he conducted his separation and retirement activities from the military service at the nearest Army Transition Center, in Vicenza, Italy. His separation from the military service became effective October 31, 2010. Claimant was offered and entered into an initial service agreement for his civilian employment. The Heidelberg Civilian Personnel Advisory Center (CPAC) issued claimant PCS government-funded travel and transportation orders to facilitate his relocation to Germany for his initial federal civilian position.

In July 2013, following his overseas tour extension for an additional 24 months, claimant requested Renewal Agreement Travel (RAT) under the provisions of the Joint Travel Regulation, now found in Chapter 7, Part A, Paragraph C7010-8. The agency denied the request for RAT, stating that its review had determined that claimant had been ineligible for an initial service agreement when initially hired as a civilian employee:

Because claimant had changed positions and duty stations since his initial appointment in September 2010, CPAC became responsible for administering his personnel actions, such as the issuance of RAT orders. It was at that time when the new administering CPAC detected that claimant was inadvertently provided a full initial service agreement in late 2010. Since an initial service agreement forms the basis for RAT under the JTR . . . , and the agency determined that claimant was ineligible for such an agreement when he was hired in late 2010, the CPAC did not authorize the travel for claimant and his spouse.

The agency based its conclusion of claimant's ineligibility for an initial service agreement on the following:

[Claimant] requests the Board to reinstate the initial service agreement he received when he was first appointed to his federal civilian position, effective 27 September 2010. [His] hiring circumstances, i.e., his separation from the military service in Vicenza, Italy, albeit with an effective date that is after his date of appointment to his civilian position, cannot be reconciled with the provisions of the JTR 2, C5566-E2.a.(1)(a) and (b) . . . It remains a fact that [claimant] undertook separation activities in Italy in order to make himself available on the set entry-of-duty date to his position in Germany. This fact cannot be changed. It may be true that [claimant] could have separated from the military service at an Army transition center in Germany, as he suggests; however, this is in the realm of speculation given the circumstances at hand. Specifically, when he left Naples, Italy, his military assignment, he did so under civilian orders to travel to Vicenza, Italy, only to proceed to Germany to where his household goods under those orders eventually were delivered.

Thus, the agency bases its conclusion of ineligibility on the outside the continental United States (OCONUS) location of claimant's retirement from the military, i.e., in Italy, rather than Germany, where he performed his initial civilian employment for the agency.

Discussion

The JTR applicable in July 2010 contains the following provisions that allow an agency to enter into an initial service agreement with a locally-hired civilian employee at an OCONUS permanent duty station (PDS), i.e., an individual who when first hired as a civilian employee had not transferred from a CONUS PDS. The JTR includes in this group of eligible employees former military employees who separated from military service OCONUS and accepted a civilian position. Claimant asserts he is within this eligible group of employees, while the agency asserts claimant is not. The applicable provisions of the JTR read as follows:

C5566 OCONUS LOCALLY HIRED EMPLOYEE INITIAL AGREEMENTS

A. General

1. An initial agreement is not an entitlement for a locally hired person.
2. An initial agreement is a recruitment incentive for locally hiring a civilian employee with an actual residence in a CONUS/non-foreign OCONUS area, outside the PDS geographical locality, to accept Federal employment in an OCONUS area.
3. An individual must not automatically be granted an initial agreement because the individual meets eligibility requirements.

B. Local Commander Negotiation Restrictions

1. Foreign Areas. A foreign area local commander may negotiate an initial agreement with a locally hired employee if the conditions in par. C5566-E are met.
2. Non-foreign OCONUS Areas. A non-foreign OCONUS local commander may negotiate an initial agreement with a locally hired person for recruitment purposes if the conditions in par. C5566-E are met, ***but only if the position is one for which qualified local applicants are not readily available.***

....

E. Initial Service Agreement Requirements. An initial service agreement may be negotiated with an eligible local hire only if the specific requirements noted below are met.

....

2.a.(1) Former Military Member. A former military member must be:

(a) Separated/retired locally (within the foreign OCONUS country in which the civilian position is located to which the individual is appointed) while serving in a foreign OCONUS area, and

(b) Appointed to a vacant appropriated-fund civilian position before expiration of that individual's authorization for return travel and transportation to a CONUS/non-foreign OCONUS area accruing from the prior military service. . . .

The agency asserts that claimant was not entitled to an initial service agreement pursuant to the Joint Travel Regulations (JTR), and claimant's initial service agreement was therefore inadvertently and improperly issued by the agency. In support of its position, the agency refers to the provisions of C5566, which state the eligibility requirements for former military members for a initial service agreement.

The agency concludes that because claimant retired from the military position he held in Italy, and not in Germany, he did not meet the condition (a) above, i.e., he was not separated/retired locally (within the foreign OCONUS country in which the civilian position is located to which the individual is appointed).

The agency's interpretation of the regulation is correct. Claimant was not separated/retired in Germany, but in Italy. As such, he did not meet the condition of C5566-E2.a.(1)(a) above, which requires that, in order for a locally-hired former military employee to be eligible to receive an initial service agreement, i.e., the employee's act of separation or retirement from the military must occur in the country in which the employee is locally hired.

Decision

The claim is denied.

ALLAN H. GOODMAN
Board Judge