



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

May 6, 2014

CBCA 3744-RELO

In the Matter of SYDNEY C. KAUS

Sydney C. Kaus, Wichita, KS, Claimant.

Cheryl A. Holman, Chief, PCS Travel Section, Department of Veterans Affairs, Austin, TX, appearing for Department of Veterans Affairs.

SHERIDAN, Board Judge.

Claimant, Sydney C. Kaus, a Department of Veterans Affairs (VA) employee, asks the Board to waive a bill of collection issued against her in the amount of \$6109.56. The Board has no authority to waive an agency's assessment of a debt that is based on proper application of the Federal Travel Regulation (FTR).

Background

Claimant is employed at the Wichita VA Medical Center (VAMC), Wichita, Kansas. On May 2, 2013, claimant accepted a position as a supervisory human resources specialist at the Charles George VA Medical Center in Asheville, North Carolina. The position was a promotion for claimant, and in connection with her transfer, claimant executed a service agreement on May 17, 2013. In the agreement, claimant agreed to accept the transfer within the VA and remain in the service of the Government for twelve months following the date of her transfer, in exchange for certain relocation benefits.

As part of the relocation, on May 30, 2013, claimant was authorized a two-day house-hunting trip and twenty-eight days of temporary quarters subsistence allowance. Due to the timing of authorizations, claimant had very little time to find housing in Asheville for herself and her family. On June 2 and 3, 2013, claimant conducted a house-hunting trip in Asheville. Claimant asserts that after meeting with a realtor and viewing properties she was unable to

find a residence to lease or purchase that met the date she was due to report at her new duty station. Claimant contacted the VA in Asheville and declined the position.

Claimant submitted a voucher and was paid \$6109.56, \$4783.50 for temporary quarters expenses and \$1326.06 for house-hunting expenses. However, on July 22, 2013, the VA notified claimant that she had violated the service agreement by not transferring to Asheville, that the VA had mistakenly reimbursed her the expenses, and that it was seeking repayment of the \$6109.56.

Claimant sought, and was given instructions on how to dispute or seek waiver of the debt by VA's Permanent Change of Station (PCS) Travel Section. The VA's PCS Travel Section told claimant that the waiver document should first be submitted to the Wichita VAMC's chief financial officer (CFO), and if the CFO denied the waiver, claimant could submit a waiver request to the VA's Committee on Waivers and Compromises (COWC). Ultimately, if the COWC denied the waiver, claimant was instructed that "the employee can file a[t] the CBCA [Civilian Board of Contract Appeals], where a judge reviews the waiver request and reaches a decision that both the VA and the employee must abide by. This is the final appeal for PCS disputes."

Claimant pursued a waiver request, and the CFO at the Wichita VAMC denied the waiver. The waiver request was forwarded to the COWC at VA's regional office (RO) in St. Paul, Minnesota. That COWC responded on November 5, 2013, stating: "The waiver of \$6109.56 cannot be considered." As reasons for this response, the COWC's reporting member wrote:

Even though OPM allows waiver request on relocation incentive[,] VA Committee on Waivers and Compromises (COWC) authority is limited to payments made to administer the agreement. Once the agreement itself is breached any funds required because the agreement was breached may be waived [sic] only as specified. The Deputy Assistant Secretary [DAS] for Human Resources Management (05) has the authority to approve waivers of debts arising from the breach of recruitment and relocation contracts. Because this falls outside the jurisdiction of the committee, the waiver was not considered.

The VA's PCS Section wrote claimant on February 11, 2014, stating that because the COWC had determined that a waiver of claimant's debt was outside its jurisdiction, claimant had two options: "(1) set up a repayment plan with PCS/VA to repay the balance [of \$6109.56]," or "(2) submit a [waiver request to the] CBCA at the website <http://www.cbca.gov>." Claimant submitted a "request to appeal a bill of collection/request a waiver [of] a debt" to the CBCA on March 4, 2014, where the matter was docketed.

Discussion

The Board has no authority to waive an agency's assessment of a debt which is based on proper application of the FTR. Statute grants to the head of each agency the authority to waive repayment of an employee's debt which arises out of an "erroneous payment" of a relocation benefit, if the head determines that collection of the debt "would be against equity and good conscience and not in the best interests of the United States." 5 U.S.C. § 5584(a) (2012). The authority, to waive an employee's debt, such as the debt owed by Ms. Kaus, belongs to the head of the agency from which the debt arose, in this case, the Secretary of Veterans Affairs and his delegees. *RuthAnne S. Darling*, CBCA 1461-TRAV, 09-2 BCA ¶ 34,153; *Evan F. Meltzer*, CBCA 866-RELO, 07-2 BCA ¶ 33,708. It lies with the agency to understand its debt collection procedures sufficiently to assist its employees in seeking a debt waiver.

We sympathize with claimant if she has received misinformation concerning VA's policies and procedures relating to waiver of debts owed by VA employees. There is no indication in the record that claimant's request was investigated or that claimant was properly apprised of what, if any, rights she had to appeal the decision of the Wichita VAMC CFO to deny the debt waiver. It is clear that, according to the COWC at the St. Paul RO, claimant's waiver request was incorrectly referred to that COWC.

The agency also misdirected claimant to file an appeal with this Board, as this Board does not have authority to consider a debt waiver request. Claimant is entitled to have her debt waiver request fully decided by proper agency officials in accordance with the VA's policies and procedures. Accordingly, this matter is returned to the agency for determination of the proper rights and procedures that apply to claimant's appeal of her debt waiver request.

Decision

The claim is dismissed for lack of jurisdiction.

PATRICIA J. SHERIDAN
Board Judge