



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

April 16, 2014

CBCA 3451-RELO

In the Matter of SCOTT P. MENDENHALL

Scott P. Mendenhall, Atsugi, Japan, Claimant.

Theodore McGary, Chief, Labor/Employee & Services Division, Human Resources Office, Navy Region Japan, Department of the Navy, FPO Area Pacific, appearing for Department of the Navy.

SOMERS, Board Judge.

Claimant, Scott P. Mendenhall, is seeking a decision on whether he was eligible for renewal agreement travel during the month of April 2013. For the reasons set forth below, we conclude that Mr. Mendenhall was eligible for renewal agreement travel. We remand this claim to the agency to determine whether Mr. Mendenhall incurred expenses that should have been reimbursed.

Background

Mr. Mendenhall transferred from the continental United States and has been continuously assigned to tours outside of the continental United States (OCONUS) since May 2002. On May 8, 2010, Mr. Mendenhall completed a twenty-four month tour in Japan. He agreed to a renewal tour of twenty-four months in February 2010. The renewal tour would have ended on May 7, 2012.

One entitlement gained by serving one overseas tour followed by a subsequent overseas tour is renewal agreement travel (RAT), where the Government pays travel

expenses for a trip home between tours. When, as a result of mission requirements, Mr. Mendenhall could not schedule his RAT within the time period required by regulations, Mr. Mendenhall requested, and his commander agreed, to extend the end date of his renewal tour from May 7, 2012, to September 7, 2012. Mr. Mendenhall took his RAT during the summer of 2011.

In September 2012, Mr. Mendenhall received an invitation from the commanding officer to extend his tour of duty for an additional twenty months, until May 7, 2014. Mr. Mendenhall accepted the invitation and signed a document with the subject line "Response to Notification of Expiration of Overseas Tour." The document offered three options to Mr. Mendenhall. Mr. Mendenhall selected the first option. This option stated:

At the expiration of my current tour:

(x) I accept the 20 months additional tour of duty until 07 May 2014 and understand I will be eligible for Renewal Agreement Travel (RAT) if I sign a new transportation agreement.*

Mr. Mendenhall signed the document.¹ Mr. Mendenhall understood that he was agreeing to another renewal tour (meaning an additional tour) and not to an extension of his previous tour ending in September 2012.

In 2013, Mr. Mendenhall requested travel orders to use RAT leave from April 4 through April 13, 2013. The agency denied the request. Based upon its interpretation of Joint Travel Regulation (JTR) C5570, it stated:

¹ The option contained a footnote, which stated that "[t]hose agreeing to extend overseas employment past five (5) years should read & sign the consequences of extending overseas tour past 5 years below." The memorandum listed the consequences as follows:

I acknowledge that the following guidance was taken into consideration before agreeing to extend my overseas employment past five (5) years.

1. Potential loss of return rights
2. Requirement to register in the PPP [Priority Placement Program] to effect return (in case of loss of return rights)
3. Consequence of declining a PPP match
4. Eligibility for RAT

[T]he employee [only] has 22 months [rather than] 24 months because the initial tour was ‘administratively’ extended for an additional two months to allow the employee to take RAT. The employee does not meet the requirement of RAT again unless he is invited to extend for another tour after the 22 months is up.

Management does not have the option to extend 24 months vice 22 months. The [employee’s] initial service agreement was 24 months and was administratively extended for 2 months, which is a total of 26 months. The [employee’s] renewal agreement will only be 22 months because the administratively extended 2 months from the first tour counts towards the renewal tour according to JTR C5570. If the employee is extended 24 months vice 22 months, his tour would be over 48 months. According to JTR CC5570 [sic] the renewal tour must [be] equal to 24 months minus the tour of duty completed under the initial agreement extension.

Mr. Mendenhall appealed the denial of his claim for RAT to the Board.

Discussion

The statute governing RAT reimbursement, 5 U.S.C. § 5728(a) (2012), provides as follows:

[A]n agency shall pay from its appropriations the expenses of round-trip travel of an employee, and the transportation of his immediate family, but not household goods, from his post of duty outside of the continental United States, Alaska, and Hawaii to the place of his actual residence at the time of appointment or transfer to the post of duty, after he has satisfactorily completed an agreed period of service outside the continental United States, Alaska, and Hawaii, and is returning to his actual place of residence to take leave before serving another tour of duty at the same or another post of duty outside the continental United States, Alaska, and Hawaii under a new written agreement made before departing from the post of duty.

This provision is implemented by JTR C5550,² which requires, among other things, that an employee satisfactorily complete the prescribed tour of duty and enter into a new written service agreement for another overseas tour of duty in order to qualify for RAT.

In this case, Mr. Mendenhall claims entitlement to RAT based upon his belief that the agreement to extend his tour of duty for twenty additional months was actually an agreement to another renewal tour, which would entitle Mr. Mendenhall to RAT. Pointing to the September 26, 2011, agreement, Mr. Mendenhall notes that the memorandum says as much. Mr. Mendenhall believes that he fulfilled the requirements applicable to scheduling RAT by submitting his request within the time period required by the instructions contained in the Request for Orders. The dates proposed would have left twelve months remaining on his tour after performing RAT.

The agency contends that JTR C5570 mandates that Mr. Mendenhall cannot take RAT because he only has twenty-two months remaining in his renewal tour (i.e., the current tour) because his initial tour was “administratively” extended for an additional two months to allow Mr. Mendenhall to take RAT in the summer of 2011. In order to receive RAT, the agency says, Mr. Mendenhall would need to be invited to extend for another tour after the twenty-two-month tour was up. The agency also states that “if the employee is extended 24 months vice 22 months, his tour would be over 48 months.” Although the agency does not expressly state this, it appears that the agency is operating under the assumption that the maximum time at the OCONUS location is forty-eight months.

JTR C5570 addresses tour of duty requirements. In general, an employee must complete a minimum period of service when performing RAT. For tours of duty OCONUS, JTR C5570-C.1.b provides that “[a] standard tour of duty is 36 months for an initial agreement, and 24 months for a renewal agreement.” JTR C5570-B.5 states that a minimum period of service for RAT is a tour of duty “not less than 12 months from the return date to the same/different OCONUS PDS.”

Thus, JTR C5570 says that Mr. Mendenhall should (1) serve at least twenty-four months for his renewal agreement and (2) have a tour of at least twelve months remaining after he returns from RAT. This section does not appear to limit Mr. Mendenhall to a total of forty-eight months for the combined tours. The limitation set forth in this section, as applied to administratively extended tours of duty, says “[e]xcept as in par. C5570-C.4 [which is not relevant here], the length of the renewal tour must be equal to 24 months minus

² Pursuant to change 581, issued on March 1, 2014, this section of the JTR has been moved to JTR C7010.

the tour of duty completed under the initial agreement extension, or 12 months, whichever is greater.” JTR C5570-C.3.b. As applied to Mr. Mendenhall, the renewal tour would be twenty-two months, calculated by taking the original tour of twenty-four months, subtracting the tour completed under the initial agreement extension (24 - 2 months = 22 months). Because twenty-two months is greater than twelve months, Mr. Mendenhall’s renewal tour would be twenty-two months.

The fact that Mr. Mendenhall’s renewal tour is less than twenty-four months does not preclude him from taking RAT. The tour would only be limited if the OCONUS assignment had a service limitation. This is so because JTR C5515, entitled “Renewal Agreement Travel (RAT) Denial/Delay,” limits the commander’s authority to authorize a delay in performing RAT based upon a service limitation:

A delay in performing RAT should not be authorized if the resulting extension to the new tour, or requirement to serve 12 months following return to the OCONUS PDS, requires the employee to remain at the OCONUS PDS beyond any 5- (or other-) year limit on OCONUS assignments contained in personnel written material, unless the employee is not affected by, or has been released from, the 5- (or other-) year OCONUS service limitation (par. C5570-C5).

C5515-B.4.

The agency did not assert that a service limitation applied to Mr. Mendenhall, nor does the record reflect any such limitation. Assuming that no service limitation applies to Mr. Mendenhall, the JTR provides us with an example of how to compute the tour of duty where delayed RAT is involved.

Example

An employee’s initial 36-month tour ended 30 June 2003. The employee was eligible to perform RAT beginning 1 July 2003 after signing a 24-month renewal agreement. The employee departed the PDS on 1 July 2003, performed RAT and returned 31 July 2003. The new tour of duty begins on 1 August 2003 and ends 31 July 2005 (i.e., 24 months after return from RAT).

If the initial tour was extended to 31 August 2003, delaying RAT for 62 days, and RAT for 30 days was performed from 1 to 30 September 2003, the employee’s RAT tour after returning to the OCONUS PDS would be for 22 months beginning 1 October 2003 and ending 31 July 2005. The 22 months

is computed by decreasing the 24 month-tour prescribed by the PDS after the RAT completion by the number of days the initial tour was extended (62 days).

JTR C5515-B.5; *see also Lawrence J. Brenner*, GSBICA 15178-TRAV, 01-1 BCA ¶ 31,208 (2000).

The September 26, 2011, agreement indicated that Mr. Mendenhall “accept[ed] the 20 months additional tour of duty until 07 May 2014.” It also states that Mr. Mendenhall “understands that [he] will be eligible for” RAT if he signed a new transportation agreement.³ While it is possible to read that sentence as providing a contingency upon the eligibility for RAT, the contingency is that Mr. Mendenhall “sign a new transportation” agreement. Mr. Mendenhall interpreted this document to be such an agreement.

Thus, based upon the above, we conclude that Mr. Mendenhall was entitled to RAT. However, we note that the record does not indicate whether Mr. Mendenhall actually incurred any expenses related to his intended travel in April 2013, just that he intended to travel and sought orders for travel during that time. Accordingly, we remand this claim to the agency to determine whether Mr. Mendenhall incurred any expenses that should be reimbursed as renewal agreement travel.

JERI KAYLENE SOMERS
Board Judge

³ Although the document references a “new transportation agreement” rather than a new service agreement, Mr. Mendenhall believed that this document indicated his agreement to a new tour of twenty months. The agency indicates that it is not aware of any guidance the agency may have provided to the claimant with regard to his eligibility for RAT when he signed the September 26, 2011, agreement.