UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

October 20, 2014

CBCA 4096-RELO

In the Matter of RANDAL S. KENDRICK

Randal S. Kendrick, Alexandria, VA, Claimant.

Sheila Melton, Director, Travel Functional Area, Enterprise Solutions and Standards, Defense Finance and Accounting Service, Indianapolis, IN, appearing for Department of Defense.

SULLIVAN, Board Judge.

The Defense Finance and Accounting Service (DFAS) submitted on behalf of the claimant, Mr. Randal S. Kendrick, an appeal of the agency's decision that Mr. Kendrick must repay the temporary quarters subsistence expenses (TQSE) reimbursement he received as part of his transfer from Heidelberg, Germany, to Newport News, Virginia, in November 2012. DFAS seeks to recoup the amounts paid to Mr. Kendrick because Mr. Kendrick had not signed a service agreement at the time the TQSE were incurred. DFAS also seeks guidance regarding the types of relocation expenses that may be reimbursed even if a service agreement has not been signed before the costs are incurred. Because Mr. Kendrick has already fulfilled the requirements of the service agreement he subsequently signed, the Board finds that he need not repay the TQSE reimbursement. The Board lacks the authority to answer the agency's other questions because those questions are hypothetical and do not arise from an actual claim or a request for payment.

Background

On October 16, 2012, the Army authorized Mr. Kendrick to relocate from Heidelberg, Germany, to Newport News, Virginia. As part of the authorization, the Army approved the payment of relocation expenses including travel for Mr. Kendrick and his family, thirty days

of TQSE, household goods (HHG) shipment, temporary storage of HHG, and relocation income tax allowance. By orders dated November 16, 2012, Mr. Kendrick received an extension to sixty days of TQSE.

Mr. Kendrick reported at his new duty station on November 18, 2012. Mr. Kendrick and his family incurred costs for fifty-three days of TQSE, from November 18, 2012, to January 8, 2013. Mr. Kendrick signed a service agreement on February 1, 2013, agreeing to remain in government service for at least twelve months beginning on the day he reported to his new duty station. On March 1, 2013, Mr. Kendrick was reimbursed $3995.22 for TQSE. Mr. Kendrick remained employed by the Army for more than twelve months following the effective date of his transfer.

In a subsequent audit of this claim, DFAS determined that the amount paid to Mr. Kendrick should be recouped because Mr. Kendrick did not sign his service agreement until February 1, 2013, after the costs had been incurred. On September 13, 2013, DFAS demanded that Mr. Kendrick repay $3995.22.

Discussion

DFAS seeks guidance on four questions:

1. Was Mr. Kendrick entitled to TQSE even though he did not sign his service agreement until after he incurred the expense?

2. For which types of relocation entitlements does a service agreement need to be signed before the employee actually incurs the expense?

3. Which types of relocation entitlements can be paid once the service agreement is signed regardless of when the employee incurs the expense?

4. Which types of relocation entitlements, if any, are not affected by whether a service agreement is signed at all?

Because the first question involves the agency's demand for repayment, we analyze that issue first. The remaining three questions do not appear to arise from Mr. Kendrick's claim; instead, DFAS seeks guidance regarding whether there are any limitations on reimbursement of relocation expenses if a service agreement is not signed before those expenses are incurred or is not signed at all.

Requirement for a Signed Service Agreement

Section 5724a of title 5 of the United States Code provides agencies with the authority to pay travel and other expenses attendant to the transfer of the employee from one duty station to another when the transfer is in the best interest of the Federal Government. 5 U.S.C. § 5724a (2012).[1] As a condition to obtaining reimbursement of relocation expenses, an employee must sign a service agreement in which the employee agrees to remain in the service of the Federal Government for a specified period of time. 41 CFR 302-2.17 (2012). A service agreement is defined in the JTR as "a written agreement, prepared in accordance with personnel regulations, between the employee and the employee's agency, signed by the employee and an authorized agency representative stating that employee agrees to remain in GOV'T service for a period of time specified in par. C5570-B, after the employee has relocated." JTR C5550; *see* 41 CFR 302-2.12 (similar language in FTR). If an employee fails to sign a service agreement, the agency will not pay for relocation expenses. JTR C5550-B; 41 CFR 302-2.17. For a transfer to a new duty station located within the continental United States, a DOD civilian employee must agree to remain in federal service for a period of twelve months following the effective date of the transfer. JTR C5570-B; *see also* 41 CFR 302-2.13 (same requirement). If an employee fails to fulfill the requirements of a service agreement, the employee can be required to repay any travel or relocation expenses paid by the agency. JTR C5576-B; 41 CFR 302-2.14.

The JTR provides that an agency may authorize the payment of TQSE if an employee signs a written service agreement. JTR C5356. Although a signed service agreement is described as a "condition" for the authorization of TQSE expenses, when the agreement must be signed is not clear. However, the corresponding FTR provision states that an agency may authorize the reimbursement of relocation expenses "only after an employee has signed a service agreement." 41 CFR 302-2.101. This language, located among the "agency responsibilities" section of the FTR, appears to require that the agreement must be signed before the agency may authorize the employee to incur costs for which he or she will be reimbursed.

[1] The Federal Travel Regulation (FTR) is promulgated pursuant to 5 U.S.C. §§ 5707 and 5738 and governs the travel and relocation costs that may be paid for all federal civilian employees. The Joint Travel Regulations (JTR) supplement the FTR and apply to travel and relocation costs incurred by civilian employees of the Department of Defense (DOD). *Donald L. Schaffer*, CBCA 695-RELO, 07-2 BCA ¶ 33,607 (citing *Donald D. Fithian, Jr.*, GSBCA 16712-RELO, 06-1 BCA ¶ 33,204).

Despite this requirement, the failure to obtain a signed service agreement before the expenses are incurred does not preclude the payment of relocation expenses if the employee remains in government service for the time that would have been required in a properly obtained service agreement. *Regina V. Taylor*, GSBCA 13650-RELO, 97-2 BCA ¶ 29,089 (citing *Thomas D. Mulder*, 65 Comp. Gen. 900 (1986); *Baltazar A. Villarreal*, B-214244 (May 22, 1984)); *see also William G. Sterling*, CBCA 3424-RELO, 13 BCA ¶ 35,438 (lack of a signed service agreement did not preclude the payment of renewal agreement travel when employee had served the required period of time). While the purpose of obtaining a signed service agreement is to ensure the employee is on notice concerning his or her duties and obligations, *Villarreal*, the lack of a signed agreement does not relieve the employee of the obligation to remain in government service for a minimum of twelve months or to repay any expenses if he or she does not fulfill that obligation. *Joseph F. Bond*, CBCA 3578-RELO, 14-1 BCA ¶ 35,559 (employee without signed service agreement left government service after three months and was required to repay TQSE reimbursement). The converse also applies. If an employee fails to sign a service agreement but fulfills the requirement to remain in government service for the required period, the employee should be reimbursed expenses incurred. *Taylor*; *Villarreal*. That is, "it is the obligation to serve the Government for twelve months following the effective date of the transfer–rather than the physical evidence of an agreement–which controls the employee's entitlement to the relocation allowances provided by statute." *Cathryn P. White*, B-195180 (Oct. 24, 1979).

In this case, the agency failed to obtain a service agreement from Mr. Kendrick before the expenses were authorized and incurred, but did obtain one before it paid the expenses claimed. Mr. Kendrick fulfilled the obligation to remain in government service for twelve months following the effective date of his transfer. Therefore, the failure to obtain a signed service agreement prior to the incurrence of the expenses does not preclude the agency from reimbursing Mr. Kendrick his TQSE. DFAS was incorrect in its attempt to recoup these costs and Mr. Kendrick is not obligated to repay these amounts.

Request For Further Guidance

The Board lacks authority to decide the remaining questions posed by DFAS. The Board is authorized to decide claims for federal employee travel and relocation expenses under two separate statutes. First, an employee or an agency on the employee's behalf may submit an appeal of the agency's determination as to what expenses or reimbursements the employee is entitled to receive. 31 U.S.C. § 3702(a)(3). Mr. Kendrick's appeal of the agency's demand that he should repay the reimbursement for TQSE costs was presented in this manner. Second, an agency may seek an advance opinion from the Board concerning an employee claim for expenses upon which the agency has not yet acted. *Id.* § 3529(b)(2)(B); *Mark J. Lumer*, CBCA 1079-TRAV, 08-1 BCA ¶ 33,819.

When an agency seeks an advance opinion, there must be an actual employee claim for payment or reimbursement at issue. *Vivian N. Rodriguez*, CBCA 3083-RELO, 13 BCA ¶ 35,208 (2012); *Lumer*. Absent an actual monetary claim, the Board lacks authority to consider the questions presented by the agency for decision because the statute only permits evaluation of issues arising from monetary claims. *John R. Durant*, GSBCA 15726-TRAV, 02-1 BCA ¶ 31,827. The Board's authority is limited by the delegation of authority set forth in the statute. *Id.*

Here, DFAS seeks guidance on three questions concerning reimbursement of relocation expenses in the absence of a signed service agreement. These questions do not appear to arise from Mr. Kendrick's claim or that of any other specific employee. Instead, DFAS appears to be anticipating future potential issues arising from the Board's ruling regarding Mr. Kendrick's situation. While the Board appreciates the agency's desire to be thorough in considering all potential issues, the Board lacks authority to issue an opinion on the questions presented in the absence of an actual claim from an employee. Therefore, the Board declines to answer the questions presented.

Decision

Because Mr. Kendrick has fulfilled the requirements of the service agreement he would have signed had the agency presented it to him, the agency's failure to obtain a signed service agreement prior to the time the expenses were incurred does not require Mr. Kendrick to reimburse the agency for the TQSE costs he was paid. Because the other questions presented by DFAS do not appear to arise from an actual claim by an employee, the Board lacks authority to consider those questions.

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MARIAN E. SULLIVAN
Board Judge