



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

March 24, 2015

CBCA 4351-RELO

In the Matter of BRENDAN J. MOYNAHAN

Brendan J. Moynahan, Saint Ignatius, MT, Claimant.

Rena Fugate, National Park Service, Department of the Interior, Denver, CO, appearing for Department of the Interior.

VERGILIO, Board Judge.

The agency reasonably denied the claimant's request for relocation benefits and temporary quarters subsistence expenses when the claimant did not meet the fifty-mile tests. Because the relocation was a "local" move, the payment of benefits was discretionary.

The claimant, Brendan J. Moynahan, an employee of the National Park Service, Department of the Interior, relocated to a new permanent duty station with an entry on duty date in September 2014. The job announcement and his travel authorization specified that relocation benefits were available or authorized in accordance with statute and regulation. When measured by map distances on Google Maps over a usually traveled route, the new duty station is not fifty miles further from the claimant's home at the old duty station than the old duty station was from that home. The travel distance from the old to the new duty station is less than fifty miles. The claimant seeks \$82,692.96 for various estimated costs associated with the relocation. He also seeks \$29,497.15 for a thirty-day extended temporary quarters subsistence expenses (TQSE) period, time spent in appealing the denial of benefits, and commuting costs associated with a vehicle and the claimant's time.

Regulation specifies that an employee generally is eligible for relocation benefits if transferring in the interest of the Government from one duty station to another for permanent duty, and the "new duty station is at least 50 miles distant from [the] old duty station." 41

CFR 302.1.1 (2014), Federal Travel Regulation (FTR) 302.1.1. The regulation provides further detail in establishing the test to qualify for relocation benefits:

[Generally,] you may not be reimbursed for relocation expenses if you relocate to a new official station that does not meet the 50-mile distance test.

(a) The distance test is met when the new official station is at least 50 miles further from the employee's current residence than the old official station is from the same residence. For example, if the old official station is 3 miles from the current residence, then the new official station must be at least 53 miles from that same residence in order to receive relocation expenses for residence transactions. The distance between the official station and residence is the shortest of the commonly traveled routes between them. The distance test does not take into consideration the location of a new residence. This follows the distance guidelines found in *Internal Revenue Service Publication 521, Moving Expenses*.

(b) The head of your agency or designee may authorize an exception to the 50-mile threshold on a case-by-case basis when he/she determines that it is in the best interest of the Government. However, the agency cannot waive the applicability of the IRC [Internal Revenue Code]; that is, all reimbursed expenses would be taxable income to you, and the agency would have to reimburse those taxes.

FTR 302-2.6.

The regulation establishes a different test to qualify for recovery of TQSE benefits. An employee is eligible to receive a TQSE allowance when the new duty station is within the United States and the "old and new official stations are 50 miles or more apart (as measured by map distance) via a usually traveled surface route." FTR 302-6.4.

The deciding official for the agency has determined that the claimant did not meet the distance tests to receive either relocation or TQSE reimbursement. Further, the official has determined not to authorize an exception to the distance threshold, determining that payment would not be in the best interest of the Government. The distances between the residence at the old duty station and the old and new duty station and between the old and new duty station are less than fifty miles. Thus, the claimant does not qualify to recover relocation benefits or TQSE benefits. The agency has deemed it not to be in the best interest of the Government to make an exception to provide relocation benefits to this claimant under these circumstances. The claimant, who bears the burden of proof, has not demonstrated that those

determinations were erroneous or unreasonable. *Kevin Thompson*, CBCA 2225-RELO, 11-1 BCA ¶ 34,692; *Jacqueline Lazú Laboy*, GSBCA 16738-RELO, 06-1 BCA ¶ 33,205.

That the claimant and agency personnel assisting the claimant with the move initially believed that he would be reimbursed is not relevant. The authorization for payment of benefits does not alter the requirements of the regulation; as the claimant recognizes, there is a difference between the authorization and approval of payments. The same job announcement and employment offer that extend relocation and/or TQSE benefits could affect employees differently depending on the actual residences and the old and new duty station locations. While the claimant finds some unfairness in the “verbal” withdrawal of benefits, the agency simply informed the claimant that given his circumstances the benefits, although authorized, would not be available for him. Moreover, the claimant received a written email message before the start date at the new duty station that the move would be considered as short-distance under the regulations, such that the claimant could not be reimbursed for the various expenses. Benefits were not withdrawn; the claimant’s circumstances meant that given regulatory constraints, the benefits were not available to him.

After considering the mountainous conditions surrounding the old and new duty stations and what he deems to be a local commute in the area, the claimant concludes that he qualifies to be reimbursed for his move. The claimant provides analysis under a three-part test for authorizing relief if the fifty-mile test is not met. The factors are found in outdated regulations, 41 CFR 302-2.6 (2010), with refinements in a draft version of a Department of the Interior Permanent Change of Station Policy manual from October 2012 (one-way commuting distance between old and new duty station increases by at least ten miles; or an increase in the commuting time to the new duty station by at least thirty minutes one way; or a financial hardship is imposed with an increase in the annual commute costs of at least \$4000). The claimant claims to satisfy not only one element, but each of these elements, and argues that he should be authorized the requested reimbursement. The record does not show that this test is applicable. However, the test involves discretion even when the factors are satisfied. The claimant is not the head of the agency or designee vested with the authority to make the discretionary determination here at issue. The record does not demonstrate that it was inappropriate to deny benefits in this case.

The agency properly and reasonably concluded that the claimant is not entitled to reimbursement for relocation expenses or TQSE payments.

JOSEPH A. VERGILIO
Board Judge