UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

August 28, 2015

CBCA 4471-RELO

In the Matter of HENRY L. BOWNES, JR.

Henry L. Bownes, Jr., Herlong, CA, Claimant.

Ilona M. Keller, Human Resources Specialist, Civilian Personnel Directorate, Office of the Deputy Chief of Staff, Department of the Army, APO Area Europe, appearing for Department of the Army.

ZISCHKAU, Board Judge.

Henry L. Bownes, the claimant, challenges the determination of the Department of the Army's Civilian Personnel Advisory Center (CPAC) that he was not entitled to reimbursement of permanent change of station (PCS) expenses in connection with his transfer from Herlong, California, to his new assigned duty station in Stuttgart, Germany. CPAC took the position that Mr. Bownes was precluded from receiving PCS benefits because he reported to his new position with the Army Special Operations Command (SOC) less than five months after receiving PCS benefits in connection with a transfer from an overseas tour in Korea to Herlong. Although initially arguing that Mr. Bownes' transfers were not in the Government's interest, CPAC now attempts to justify its denial of PCS benefits on the basis that his second transfer (to Stuttgart) is precluded by section 5502-C.1 of the Joint Travel Regulations (JTR) ("It is neither cost effective nor efficient to provide more than one PCS move to a DoD [Department of Defense] employee during any 12-month period.") We conclude that Mr. Bownes' transfers were clearly in the Government's interest, and that statute and regulation require the agency to fund the claimant's PCS expenses for his transfer to Stuttgart. To the extent that the claimant challenges a denial of living quarters allowance (LQA), that matter is not within our jurisdiction.

Background

In early 2014, Mr. Bownes was stationed as a civilian employee in Korea with the Korea Army Contracting Command. On May 9, 2014, Mr. Bownes applied through the USAJOBS website for a position with Army SOC in Stuttgart. The vacancy announcement stated that PCS allowances may be authorized. By memorandum of June 16, 2014, the Korea Army Contracting Command terminated Mr. Bownes' overseas tour of duty effective August 9, 2014, stating that the curtailment decision was determined to be in the "best interest of the Army." Mr. Bownes was directed "to exercise [his] statutory return rights" such that he would be returned at government expense to his former duty station with Army TACOM (Tank-Automotive and Armaments Command), Sierra Army Depot, in Herlong, California. He left Korea on August 10 and resumed his work in Herlong. Mr. Bownes received PCS benefits in connection with his return to Herlong. In September 2014, Mr. Bownes was contacted by the Army SOC and given a telephone interview regarding the position in Stuttgart.

On November 1, 2014, Mr. Bownes received a tentative offer from Army SOC. The offer states that PCS expenses "are authorized in accordance with the JTR." Mr. Bownes accepted the offer on November 3, 2014. On November 19, CPAC restated the salary information but made no mention of PCS entitlement, and asked Mr. Bownes to accept or decline the salary offer by close of business November 21. On the morning of November 21, CPAC sent another electronic mail message to Mr. Bownes regarding LQA issues and PCS expenses. Regarding PCS expenses, the message quotes JTR 5502-C.1 regarding the policy that "it is neither cost-effective nor efficient to provide more than one PCS move to a DoD employee during any 12-month period" and then quotes the exceptions to this policy set forth in JTR 5502-C.2. Mr. Bownes accepted the salary offer shortly before the close of business on November 21. He received a firm job offer on December 8, 2014, which states: "I'm pleased to inform you that you have met all pre-employment conditions and I can now extend a FIRM job offer to you. Please review the terms of the appointment below and 'reply to all' with your acceptance or declination of this FIRM offer by . . . 10 December 2014." The only "terms of the appointment" that we can discern from this message is an email chain just below the December 10 message, consisting of the November 19 salary offer message and the November 1 tentative offer message. Mr. Bownes accepted this December 8 offer that same day and advised that he could report to work in Stuttgart on December 28, 2014.

On December 10, CPAC sent a message to Mr. Bownes stating, inter alia: "As discussed previously, you are not eligible for LQA or PCS." Thereafter, CPAC refused to provide travel orders to Mr. Bownes on the ground that it had determined that Mr. Bownes was not entitled to PCS expenses, because he "already had a PCS within the last twelve months." Mr. Bownes requested CPAC to reconsider its denial of his eligibility for reimbursement of his PCS expenses as well as LQA eligibility. On January 21, 2015, CPAC

determined that Mr. Bownes was not eligible for PCS or LQA entitlements. On January 26, 2015, Mr. Bownes challenged CPAC's determination by filing his claim before us.

Discussion

CPAC now concedes that both of Mr. Bownes' transfers (Korea to Herlong, and Herlong to Stuttgart) were in the Government's interest. Nevertheless, CPAC urges that the twelve-month limitation found in JTR 5502-C.1 governs, and that none of the policy exceptions found in JTR 5502-C.2 apply. On this basis, the agency maintains that it cannot provide PCS entitlements for Mr. Bownes' transfer from Herlong to Stuttgart. We do not agree.

Statute provides that the Government "shall pay" various costs for relocating an employee and his or her family to a new duty station when that employee's transfer is in the interest of the Government. 5 U.S.C. §§ 5724, 5724a (2012); *Amy Preston*, CBCA 3434-RELO, 13 BCA ¶ 35,465. Those costs can include transportation of the employee and his immediate family, shipment of household goods, real estate transaction costs, and subsistence expenses. Such benefits are not available when the transfer is primarily for the convenience of the employee. 5 U.S.C. § 5724(h). The Federal Travel Regulation (FTR), which implements these statutory provisions and is applicable to all government employees, provides that an employee is entitled to "relocation expense allowances" when he or she is "transferring in the interest of the Government from one agency or duty station to another for permanent duty." 41 CFR 302-1.1(b) (2014) (FTR 302-1.1(b)). The JTR, which implements the FTR for DoD employees, states that "PCS allowances must be paid (par. 5520) to an employee transferred from one PDS [permanent duty station] to another if the transfer is in the [Government's] interest." JTR 5502-B. The agency may not attempt to obtain the employee's agreement to waive entitlement to PCS allowances where the transfer is in the Government's interest. *Preston*.

Mr. Bownes' transfer from Korea to Herlong was certainly in the Government's interest; the curtailment order states as much. Mr. Bownes' transfer from Herlong to Stuttgart likewise was in the Government's interest, as he received an offer of employment from the gaining activity (Army SOC in Stuttgart) pursuant to a vacancy announcement for which he was competitively selected following the usual evaluation, selection, and offer procedures. There can be no question that an employee is transferred in the Government's interest when he responds to an agency-created vacancy announcement for a position and, as a result of the usual evaluation process, is selected and receives an offer for the position. *Paul B. D'Agostino*, GSBCA 16841-RELO, 06-2 BCA ¶ 33,309.

The JTR's guidelines for determining whether a transfer is "in the Government's interest" are not inconsistent with this. JTR 5502-B.2. provides guidelines for making a

"government interest" determination. The provision identifies "management directed" transfers as being in the Government's interest where "a DoD Component recruits/requests an employee to transfer," but states that such transfers are limited to: (1) reductions in force, (2) transfers of function, (3) DoD component career development program transfers, (4) DoD component-directed placements; and (5) transfers made in the Government's interest. In contrast, the JTR categorizes a transfer as not being in the Government's interest "[i]f an employee pursues, solicits or requests (not in response to a vacancy announcement) a position change." JTR 5502-B.2.b.1. Here, the decision to transfer resulted from a management-directed offer to the claimant after a competitive merit selection in response to Mr. Bownes' application pursuant to the agency's vacancy announcement. In any event, CPAC now concedes that Mr. Bownes' transfer to Stuttgart was in the Government's interest.

CPAC argues that none of the exceptions of JTR 5502-C.2 to the twelve-month policy limitation found in JTR 5502-C.1 apply here. JTR 5502-C.2.a provides that the general limitation does not apply where: (1) the employee was a re-employed former employee affected by a reduction in force or a transfer of function; (2) the transfer is in accordance with a DoD component-directed placement; and (3) the transfer is from an actual residence to a new duty station in the United States from outside the country if the employee exercised return rights as long as no PCS entitlement was furnished. Section 5502-C.2.b states another exception to the policy, where the authorizing official certifies that the proposed transfer is in the interest of the Government, an equally qualified employee is not available within the commuting area of the activity, and the losing activity agrees to the transfer.

Regardless of whether Mr. Bownes' transfer fits neatly into one of the policy exceptions of JTR 5502-C.2, the agency's determination not to provide the PCS allowances to Mr. Bownes fails when viewed against the mandatory language of 5 U.S.C. § 5724(a) and FTR 302-1.1(b). The twelve-month limitation policy in JTR 5502-C.1, and the policy exceptions in JTR 5502-C.2, are policies directed primarily to the agency itself as the employer and are intended to be considered by DoD management in hiring decisions. These provisions cannot defeat an employee's statutory right to PCS benefits where the agency has transferred an employee in the Government's interest. Moreover, CPAC's refusal to issue travel orders, based on its erroneous determination that the claimant's transfer from Herlong to Stuttgart was exempt from PCS entitlement, cannot stand. The agency was required to issue a proper travel authorization for such a transfer. *D'Agostino* (agency's failure to provide the employee with any of the documents related to a transfer does not defeat the PCS benefits conferred by statute).

Regarding Mr. Bownes' claim for LQA, we have held that LQA is an allowance accruing to an employee after travel and relocation to a new post. It is more properly viewed as a species of compensation to be referred to the Office of Personnel Management for

resolution. *Mary D. Wilson*, CBCA 1510-RELO, 09-2 BCA ¶ 34,184 (and cases cited therein). Accordingly, we have no jurisdiction to make a determination concerning the claimant's entitlement to LQA.

We remand this claim for agency action in accordance with this decision.

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JONATHAN D. ZISCHKAU
Board Judge