



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

July 26, 2016

CBCA 5334-RELO

In the Matter of JEFFREY A. CLEMENTS

Jeffrey A. Clements, Collbran, CO, Claimant.

Patricia Rauls, Employee Relations Specialist, Human Resources Management, Job Corps National Office, Forest Service, Department of Agriculture, Golden, CO, appearing for Department of Agriculture.

HYATT, Board Judge.

Claimant, Jeffrey A. Clements, is a former employee of the United States Forest Service's Job Corps Civilian Conservation Center (Job Corps) in Collbran, Colorado. His employment with Job Corps was terminated during his probationary period after he developed a medical condition that caused him to be unable to work. The Job Corps is taking action to recoup the expenses of moving Mr. Clements to Collbran incident to his hire. Mr. Clements has requested that the Board review the agency's decision. For the reasons stated, we grant his claim.

Background

Mr. Clements, a new federal appointee, was hired as a guidance counselor by the Job Corps in February 2015. The agency paid the expenses of his travel to the new duty station and for the transportation of his household goods from Nebraska to Collbran. Mr. Clements signed a service agreement obligating him to remain in the service of the Federal Government for twelve months following the date that he reported for work "unless separated for reasons beyond [his] control and acceptable to the Government." The service agreement further provided that a violation of the agreement would entitle the Government

to recover any monies expended as payments for travel and transportation of household goods.

Shortly after reporting for duty, Mr. Clements was diagnosed with a severely disabling medical condition and was unable to work after June 20, 2015. On September 2, 2015, the Job Corps terminated him from his position so that he would be eligible for disability payments. The Job Corps then established a debt in the amount of \$3052.82 for the relocation expenses incurred by the agency for the move to Colorado. To collect the debt, the agency is garnishing Mr. Clements' disability payments and has also garnished his tax refund. This action is causing substantial financial hardship for Mr. Clements.

In response to an inquiry from the Board, the Job Corps did not address its reasons for seeking to recoup these costs, but did state that it has been trying to help Mr. Clements by seeking a waiver of repayment of the funds. The agency also advised him to seek the Board's review of this matter.

Discussion

By statute, the Government may pay the travel and transportation expenses of a new appointee only if the employee agrees in writing to remain in federal service for twelve months after the appointment "unless separated for reasons beyond his control that are acceptable to the agency concerned." 5 U.S.C. § 5723(b) (2012). The pertinent Federal Travel Regulation (FTR) provision similarly provides that if an employee violates his service agreement "other than for reasons beyond [the employee's] control and which must be accepted by [the] agency," the employee will have "incurred a debt due to the Government" and must "reimburse all costs that [the] agency has paid towards [the employee's] relocation expenses." 41 CFR 302-2.15 (2015). The service agreement Mr. Clements signed also contained language to this effect.

The agency appears to have misconstrued the conditions set forth in the statutory provision as implemented by the FTR and the written service agreement signed by the employee. There is no automatic requirement that an agency establish and collect a debt to recoup relocation costs should an employee fail to complete a full twelve months of service after moving at the Government's expense. *Melinda K. Kitchens*, GSBCA 16639-RELO, 05-2 BCA ¶ 33,062, at 163,878. Rather, the agency should determine whether it is appropriate to do so given the individual circumstances of an employee's departure from federal service prior to fulfillment of the obligations of the service agreement.

In reviewing a similar claim, the Board held that the agency abused its discretion when it decided to require a former employee, who retired on disability, to repay relocation

expenses. *Clarence J. Larson*, CBCA 616-RELO, 07-2 BCA ¶ 33,671. The Board explained that a physical condition that precludes an employee from performing his or her job is a circumstance beyond that employee's control. *Id.* at 166,704 (citing *Michael J. Halpin*, GSBCA 14509-RELO, 98-1 BCA ¶ 29,730).

Here, it is undisputed that Mr. Clements was disabled and consequently unable to perform his job. In addition, Mr. Clements did not voluntarily resign from his position. Rather, the Job Corps terminated his employment to allow him to obtain disability retirement benefits. This is a circumstance that is entirely beyond the control of Mr. Clements. The agency has not suggested that Mr. Clements was capable of performing his job duties notwithstanding his disability. Moreover, Mr. Clements did not voluntarily resign his position, and the agency's statements, including its desire to seek a waiver of repayment, implicitly recognize that the reasons underlying Mr. Clement's separation were acceptable to it. These circumstances do not give rise to a violation of the statute, regulations, or the service agreement such as to justify requiring repayment of relocation expenses.

Decision

The claim is granted. The Job Corps should discontinue the garnishment of Mr. Clements' disability benefits and promptly refund to him any amounts already collected.

CATHERINE B. HYATT
Board Judge