



UNITED STATES  
CIVILIAN BOARD OF CONTRACT APPEALS

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November 27, 2019

CBCA 6354-RELO

In the Matter of REBECCA J. LOTT

Rebecca J. Lott, Port Republic, MD, Claimant.

Alison Gray, Associate General Counsel, Office of Civilian Human Resources, Department of the Navy, Washington Navy Yard, Washington, DC; and Michael J. McCormick, Senior Associate Counsel, Office of Counsel, Commander Navy Region Europe, Africa, Southwest Asia, Department of the Navy, FPO Area Europe, appearing for Department of the Navy.

**LESTER**, Board Judge.

The Department of the Navy seeks reconsideration of our decision of April 26, 2019, in this matter, in which we granted claimant's request for miscellaneous expense allowance (MEA). *See Rebecca J. Lott*, CBCA 6354-RELO, 19-1 BCA ¶ 37,328, at 181,549. For the reasons discussed below, we deny the Navy's request.

Background

As explained in our original decision, in August 2015, Ms. Lott was transferred, under the auspices of the civilian career employee rotation program authorized by 10 U.S.C. § 1586 (2012), from a permanent duty station (PDS) with the Naval Air Systems Command (NAVAIR) in Patuxent River, Maryland, to a PDS with the Office of Naval Global Research (ONGR) in the United Kingdom. She signed a transportation agreement at that time, agreeing to serve at her new duty station outside the continental United States (OCONUS) for at least twelve months. By statute, she was entitled at the successful conclusion of her ONGR assignment to return to a position at Patuxent River without reduction in the seniority,

status, and tenure that she held immediately prior to her assignment to duty OCONUS. *See id.* § 1586(c). Ms. Lott satisfied the requirements of her service agreement by remaining with ONGR at her London PDS for approximately three years.

In November 2018, Ms. Lott exercised her statutory return rights to a position at her previous NAVAIR command. As part of that return, ONGR's human resources office issued travel orders that authorized the following expenses for Ms. Lott's return reassignment: the cost of travel between London and Patuxent River, per diem, household goods (HHG) shipment, and temporary HHG storage. The travel orders did not include temporary quarters subsistence expenses (TQSE), the relocation income tax allowance (RITA), or MEA, but indicated that NAVAIR, as the gaining command, "is authorized to amend these orders . . . with the concurrence of the losing activity." NAVAIR informed the ONGR human resources office that NAVAIR was not authorizing any of those expenses. Subsequently, however, while the current claim was pending before the Board, Ms. Lott's travel orders were amended to authorize RITA, but not MEA or TQSE.

In its original response to Ms. Lott's claim seeking MEA, the Navy cited to 5 U.S.C. § 5724(a) as the statutory basis for Ms. Lott's transfer from London to Patuxent River and for the expense reimbursements that Ms. Lott's travel orders authorized. In our April 26, 2019, decision, we held, consistent with past precedent, that "an employee who is reimbursed for travel and transportation expenses under section[] 5724(a) . . . is also entitled to MEA." *Rebecca J. Lott*, 19-1 BCA at 181,547. In seeking reconsideration, the Navy asserts that it erred in citing to section 5724(a) in its original briefing and that, because Ms. Lott was exercising return rights, the transfer was actually governed by 5 U.S.C. §§ 5722 and 5724(d), which, the Navy argues, bar the Board's MEA award.

## Discussion

### The Standard for Reconsideration

Normally, "[a]n argument which could have been submitted previously, before the record was closed, is not a sufficient ground for reconsideration" in a travel or relocation matter. *Daniel Rea*, CBCA 6059-RELO, 18-1 BCA ¶ 37,185, at 180,998. Further, the Board is not obligated to accept new information on reconsideration that was previously available to the agency. *William V. Kinney*, CBCA 5861-TRAV, 19-1 BCA ¶ 37,273, at 181,371 n.1. Nevertheless, we are "always free to consider such an argument . . . to correct clear error or prevent manifest injustice." *George Panos*, CBCA 4946-RELO, 16-1 BCA ¶ 36,402, at 177,463. The error at issue here is one of the agency's own making, given that it, as it now tells us, incorrectly referred in its original briefing to 5 U.S.C. § 5724(a) as the basis upon which Ms. Lott's return travel and transportation expenses were authorized. Nevertheless,

in the interests of clarity, and because consideration of the agency's argument does not ultimately change the result on Ms. Lott's claim, we exercise our discretion to consider the Navy's new argument.

### The Interplay Between "Return Rights" and Full Relocation Benefits

When an employee transfers in the interest of the Government from an existing position at a PDS within the continental United States (CONUS) to one at a new OCONUS PDS, he or she is expected to execute a written service or transportation agreement committing to remain in government service for no less than one and no more than three years. 5 U.S.C. §§ 5722(b)(2), 5724(d); Federal Travel Regulation (FTR) 302–2.14(b), -3.503 (41 CFR 302-2.14(b), -3.503 (2018)). Upon successful compliance with his or her service agreement requirements, the employee, in accordance with the mandate of 5 U.S.C. §§ 5722 and 5724(d), earns what in the past have been referred to as "limited overseas return rights," *Charles W. Walsh*, B-254371 (Feb. 2, 1994)—that is, the employee becomes entitled to reimbursement for particular travel and transportation expenses that he or she incurs in returning from the OCONUS PDS to his or her actual residence at the time of the original OCONUS duty assignment. 5 U.S.C. §§ 5722(a)(2), (c)(2). Once vested, these "return rights," which are mandated by statute, are not discretionary. *Robert J. Posey*, CBCA 1112-RELO, 08-2 BCA ¶ 33,940, at 167,950.

For returning employees who are separating or retiring from federal service at the end of their OCONUS duty, the FTR specifically lays out what travel and transportation expenses 5 U.S.C. §§ 5722 and 5724(d) cover. FTR 302-3.101 contains several tables addressing the mandatory and discretionary relocation allowances that employees receive in different employment transfer situations, and table F within that section identifies the following travel or transportation entitlements that the "agency must pay or reimburse" to employees returning from OCONUS official stations to places of actual residence for separation: (1) "transportation for [the] employee [and] immediate family member(s)"; (2) "[p]er diem for [the] employee"; and (3) "[t]ransportation [and] temporary storage of household goods." FTR 302-3.101 tbl. F.<sup>1</sup> These return reimbursements are "limited" in that they do not include other relocation expenses, such as real estate expenses, TQSE, or MEA, that 5 U.S.C. §§ 5724(a) and 5724a authorize for employees transferring from one PDS to a new PDS. *Charles W. Walsh*, B-254371; see *Paul C. Martin*, GSBCE 13722-RELO, 98-1 BCA ¶ 29,412, at 146,119 n.3 (1996); *William F. Krone*, B-213855 (May 31, 1984).

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<sup>1</sup> Table F also provides that the "agency has discretionary authority to pay or reimburse" the "[s]hipment of [a] privately owned vehicle" to employees returning from OCONUS to their actual place of residence for separation. FTR 302-3.101 tbl. F.

Ms. Lott, having successfully met the requirements of her OCONUS service agreement, was entitled to these “limited overseas return rights” reimbursements under 5 U.S.C. §§ 5722 and 5724(d) upon her return from London to the location of her actual pre-OCONUS residence. *See Richard M. Boyer*, B-217159 (June 28, 1985) (employee’s right to expenses covered by limited overseas return rights “vested once [the employee] completed the [required] tour of duty to which he had agreed incident to his transfer to [the OCONUS PDS]”). Nevertheless, like many other federal employees returning to the United States from OCONUS duty stations, she was not retiring or separating from federal service when she completed her OCONUS duty. Instead, she was returning to continue her employment with the Federal Government, but in a CONUS position.

Typically, “[a]ll expense reimbursement rights associated with relocation travel between duty stations where permanent duty is to be performed at the new duty station come within the purview of 5 U.S.C. §§ 5724[(a)] and 5724a.” *Thomas D. Mulder*, 65 Comp. Gen. 900, 903 (1986). “Those employees who qualify for reimbursement under section 5724[(a)] also become entitled under 5 U.S.C. § 5724a to the payment of family per diem, [TQSE], house sale and purchase expenses, and other relocation expenses,” including MEA. *Id.*; *see Richard M. Boyer*, B-271159 (“Employees transferred in the interest of the Government from one [PDS] to another and paid expense of travel and transportation under 5 U.S.C. § 5724(a) are also entitled to reimbursement for [MEA] under 5 U.S.C. § 5724a(b).”). The only statutory limitations on those rights are those set forth in sections 5724(a) and 5724a themselves: “that the transfer must be (1) in the interest of the government, and (2) without a break in service.” *Thomas D. Mulder*, 65 Comp. Gen. at 903; *see* 5 U.S.C. § 5724(a) (providing for reimbursement of “the travel expenses of an employee transferred in the interest of the Government from one official station or agency to another for permanent duty, and the transportation expenses of his immediate family,” as well as household goods transport and temporary storage). Only if “a transfer is made primarily for the convenience or benefit of an employee . . . or at his request” may the expenses covered by section 5724(a) be disallowed. 5 U.S.C. § 5724(h).

Although the Navy, in its original submission in this matter, identified section 5724(a) of title 5 as the statutory basis for Ms. Lott’s London-to-Patuxent transfer, the Navy argues on reconsideration that its original representation was in error and that section 5724(a) cannot apply in the circumstances here. It asserts that, where an OCONUS-to-CONUS return is at issue, the provisions of sections 5722 and 5724(d) effectively trump sections 5724(a) and 5724a, limiting the returning employee, if transferring to a position back at his or her old CONUS PDS, to expenses covered by his or her “limited overseas return rights.” This position has been repeatedly rejected in the past. As both we and our predecessors in deciding relocation entitlement matters, the General Services Board of Contract Appeals (GSBCA) and the Comptroller General, have previously recognized, while sections 5722 and

5724(d) address the travel and transportation costs to which a “return rights” employee is entitled, they do not address, or preclude, entitlement to the more expansive relocation benefits, under sections 5724(a) and 5724a, to an employee who is returning to continue working for the Federal Government:

It is clear that [the employee] is entitled to return travel and transportation expenses under 5 U.S.C. § 5722 by virtue of his service [OCONUS]. The question is whether he is also entitled to the full range of relocation benefits under 5 U.S.C. §§ 5724 and 5724a. We conclude that he is so entitled. . . . Since his transfer was in the interest of the government and occurred without a break in service, [the employee] meets the statutory conditions for entitlement to the full receipt of relocation benefits in 5 U.S.C. §§ 5724 and 5724a. We find no basis for distinguishing between the relocation rights of an employee who makes an inter-agency transfer where both posts of duty are in the continental United States and an inter-agency transfer involving a return from a post of duty [OCONUS] to a post of duty in the continental United States.

*Thomas D. Mulder*, 65 Comp. Gen. at 904 (citations omitted);<sup>2</sup> see *Dennis L. Brink*, CBCA 2871-RELO, 13 BCA ¶ 35,231, at 172,843 (“5 U.S.C. § 5722 concern[s] travel and transportation costs and do[es] not address entitlement to a relocation benefit such as TQSE [or MEA] for a returning employee.”); *Janice F. Stuart*, GSBCA 16596-RELO, 05-1 BCA ¶ 32,960, at 163,285 (“Where an employee returns from ‘overseas’ as a result of a transfer which is in the interest of the Government, however, the employee is entitled to relocation benefits *as well as* the expenses of travel and transportation.”), *aff’d on reconsideration*, 05-2 BCA ¶ 33,024, at 163,668 (5 U.S.C. § 5722 “does not address relocation benefits other than travel and transportation expenses”); *Ronald G. West*, B-239870 (Sept. 30, 1991) (an employee transferring OCONUS to CONUS in the interest of the Government and without a break in service “is entitled to the full range of relocation benefits under 5 U.S.C. §§ 5724

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<sup>2</sup> Although the OCONUS-to-CONUS transfer in *Thomas D. Mulder* involved a change of employing agencies, there is no reason that the same rule applicable there would not apply to an intra-agency OCONUS-to-CONUS transfer, like the one at issue here. See, e.g., *Dennis L. Brink*, CBCA 2871-RELO, 13 BCA ¶ 35,231, at 172,844 (applying 5 U.S.C. § 5724a in considering relocation benefit for employee who returned from OCONUS duty to an intra-agency position at his original Texas PDS); *Janice F. Stuart*, GSBCA 16596-RELO, 05-1 BCA ¶ 32,960, at 163,285-86 (intra-agency return to the employee’s original Portland PDS); *Janet Rigoni*, GSBCA 16018-RELO, 04-1 BCA ¶ 32,427, at 160,484 (2003) (intra-agency return to the employee’s original Virginia PDS).

and 5724a, even though he has vested overseas return travel rights under 5 U.S.C. § 5722(a)(2)"). The fact that Ms. Lott had "limited overseas return rights" after satisfying her service agreement with ONGR does not preclude her from recovering full relocation benefits under 5 U.S.C. § 5724(a) if she otherwise meets the criteria of that statutory provision.

The Navy argues, without citation to any case precedent, that 5 U.S.C. § 5724(a) "is applicable only to CONUS to CONUS transfers" and can never apply to OCONUS transfers. The statute does not say that. In fact, applying standard principles of statutory interpretation, it says the opposite. Reading its plain language, subsection (a) of section 5724 applies whenever an employee "transfer[s] in the interest of the Government from one official station or agency to another for permanent duty," without further limitation or qualification. *Id.* The next two subsections of section 5724 are written very differently: subsection (b) expressly applies only to employees "transfer[ring] between points inside the continental United States, inside Alaska, or between the continental United States and Alaska," while subsection (c) expressly applies only to employees "transfer[ring] between points inside the continental United States." *Id.* § 5724(b)-(c). Given that Congress included language in subsections (b) and (c) expressly limiting their applicability to CONUS-to-CONUS (or CONUS/Alaska-to-CONUS/Alaska) transfers, it would violate basic principles of statutory interpretation for us to add a similar, but unwritten, CONUS-to-CONUS limitation into subsection (a). *See TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001) ("It is 'a cardinal principle of statutory construction' that 'a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant.'" (quoting *Duncan v. Walker*, 533 U.S. 167, 174 (2001))). We reject the Navy's invitation to exclude OCONUS-to-CONUS transfers from the scope of section 5724(a).<sup>3</sup>

The Navy also suggests that, because section 5724(d) requires any employee transferring OCONUS with return rights be treated as a new appointee, we should interpret

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<sup>3</sup> The Board and its predecessors in deciding travel and relocation matters have on numerous occasions applied sections 5724(a) and 5724a to situations involving transfers between OCONUS and CONUS duty stations. *See, e.g., Daniel B. Hogan*, CBCA 3742-RELO, 14-1 BCA ¶ 35,674, at 174,607 (CONUS to OCONUS); *Department of Justice Employee*, CBCA 2611-RELO, 12-1 BCA ¶ 34,934, at 171,752 (OCONUS to CONUS); *Charles H. Noonan*, CBCA 2557-RELO, 12-1 BCA ¶ 34,929, at 171,746 (CONUS to OCONUS); *Janet Rigoni*, GSBICA 16018-RELO, 04-1 BCA ¶ 32,427, at 160,483-84 (2003) (CONUS to OCONUS); *Riyoji Funai*, GSBICA 15452-RELO, 01-1 BCA ¶ 31,342, at 154,778 (OCONUS to CONUS); *Richard L. Canas*, B-189358 (Feb. 8, 1978) (CONUS to OCONUS).

provisions in the FTR applicable to “new appointees” as also applying to transferring “return rights” employees. Yet, doing so would make the FTR’s provisions as they apply to transferring OCONUS employees either meaningless or incomprehensible. FTR 302-3.207 distinguishes between “[a]n employee transferring to, from, or between official stations OCONUS” and “[a] new appointee to a position OCONUS [who] at the time of [his or her] appointment [has a] residence . . . in an area other than [his or her] post of duty,” and FTR 302-3.208 refers to separate sets of relocation expense entitlements for, in one section, new appointees and for, in another, existing but transferring employees:

What relocation expenses will my agency pay for my overseas assignment and return?

To determine what relocation expenses your agency will pay for your overseas assignment and return, see:

- (a) Section 302-3.2 if you are a new appointee; or
- (b) Section 302-3.101 if you are a transferred employee.

FTR 302-3.208. Were we to hold that, for purposes of applying the FTR provisions, the definition of “new appointee” includes long-time employees transferring OCONUS, it would render the portions of the FTR expressly defining the rights of employees transferring OCONUS meaningless, in violation of standard principles of regulatory interpretation. *See Buchanan v. Nicholson*, 451 F.3d 1331, 1336 (Fed. Cir. 2006) (interpretation of regulation is unreasonable if it would render portions of the regulation meaningless).

The Navy also suggests that we treat Ms. Lott’s return to Patuxent River not as an actual transfer from an OCONUS permanent duty station back to a CONUS permanent duty station under section 5724(a), but as a return to a CONUS PDS that she never permanently departed. That is, we should view Ms. Lott’s time in London as something like a work detail or temporary duty travel. Under that theory, section 5724(a) would not apply because Ms. Lott never really changed her PDS. That argument directly conflicts with the Navy’s official employment records, which reflect that, when the Navy sent Ms. Lott to London in 2015, it named London as her new PDS and that, when she returned in 2018, it identified the move as a transfer to a new CONUS PDS. To the extent that the Navy is questioning whether an employee who returns to her original CONUS duty post from an OCONUS location is establishing a new CONUS residence for purposes of relocation benefits (and MEA) entitlement, she is, even if she moves back into the home in which she lived prior to moving OCONUS. *See Deward W. Moore*, B-187874 (May 31, 1977) (“When [the employee] was transferred back to Johnstown, [he] was again entitled to miscellaneous expenses . . . , as he discontinued the residence in Clearfield and returned to his former residence in Johnstown.

The fact that [the employee] returned to his former residence did not [a]ffect his eligibility.”). We cannot reclassify Ms. Lott’s employment history now.

### The “In the Interest of the Government” Requirement

The relocation entitlements that section 5724(a) creates are only available to an employee whose transfer to a new PDS is “in the interest of the Government.” In our original decision in this matter, we held that, because the Navy had authorized Ms. Lott to receive certain travel and transportation reimbursements that are listed in table C of FTR 302-3.101, titled “Transfer from OCONUS Official Station to an Official Station in CONUS,” Ms. Lott was entitled to *all* of the mandatory entitlements listed in that table. In doing so, we assumed, based in part on the Navy’s representation in its briefing that it had authorized the travel and transportation costs pursuant to section 5724(a), that the agency must have made a determination, either expressly or implicitly, that Ms. Lott’s transfer was in the Government’s interest.

On reconsideration, the Navy tells us that our assumption was wrong. Looking again at Ms. Lott’s original travel orders, we see that the costs that ONGR originally authorized are those covered by Ms. Lott’s “limited overseas return rights,” to which Ms. Lott is entitled because she satisfied the requirements of her original CONUS-to-OCONUS service agreement. *See Richard Gong*, CBCA 5824-RELO, 18-1 BCA ¶ 36,997, at 180,168 (“[C]laimant’s statutory rights arising from the completion of his service agreement are not dependent on whether claimant’s subsequent transfer to CONUS was in the interest of the Government.”). To the extent that a returning employee accepts a CONUS position that is primarily for his or her benefit rather than in the interest of the Government, the employee will not be entitled to any relocation benefits under section 5724(a), “not even transportation of persons and property.” *Janice J. Devilbiss*, GSBCA 15804-RELO, 03-1 BCA ¶ 32,065, at 158,473 (2002); *see Jackie Leverette*, GSBCA 15806-RELO, 03-1 BCA ¶ 32,119, at 158,799 (2002). Such an employee returning from OCONUS will still, though, be entitled to his or her vested “return rights” benefits under section 5722 if he or she has satisfied his or her CONUS-to-OCONUS service agreement. *Jackie Leverette*, 03-1 BCA at 158,799.

The mere fact that ONGR authorized reimbursement of the travel and transportation costs to which Ms. Lott’s “return rights” entitled her does not mean that the Navy found Ms. Lott’s transfer to a position at her CONUS PDS to be in the Government’s interest. Accordingly, payment of “return rights” benefits, without a decision to pay those types of costs as part of a relocation in the interest of the Government, does not invoke entitlement to all of the mandatory relocation allowances identified in table C of FTR 302-3.101. To the extent that our prior decision suggests otherwise, it was incorrect. The mere fact that the “return rights” travel and transportation cost entitlements under sections 5722 and 5724(d)



overlap with, and mirror, some of the more fulsome relocation entitlements under sections 5724(a) and 5724a does not eliminate the “in the interest of the Government” requirement for section 5724(a) and 5724a reimbursements.

The Navy argues on reconsideration that, if we find (as we have above) that “return rights” employees transferring to a CONUS position are not automatically barred from expense reimbursements under section 5724(a), we can consider an MEA award only if we first undertake an analysis to determine whether, in this particular case, Ms. Lott’s transfer to Patuxent River was in the Government’s interest, rather than primarily in Ms. Lott’s. Because agencies have substantial discretion in determining whether a particular transfer is in the interest of the Government, *Timothy A. Burgess*, GSBCA 16725-RELO, 05-2 BCA ¶ 33,103, at 164,078, our job in conducting any such analysis normally is to review the *agency’s* determination as to the primary beneficiary of a transfer and consider whether it is arbitrary, capricious, or clearly erroneous under the facts of the case. *Glenda F. Wall*, CBCA 3230-RELO, 13 BCA ¶ 35,397, at 173,667; *Jackie Leverette*, 03-1 BCA at 158,799.

The Navy has not presented us with any analysis that it conducted on this issue. In the circumstances here, though, it is unnecessary. First, the Navy did not raise this issue in its original briefing in response to Ms. Lott’s claim, even though it could have, and it is too late to raise that argument for the first time on reconsideration. Second, by necessity, the Navy *must* have already decided that Ms. Lott’s transfer from London to Patuxent River *was* in the interest of the Government. In addition to granting Ms. Lott the travel and transportation costs that overlap with her “return rights” benefits, the Navy’s travel orders for Ms. Lott, as amended while this claim was pending before the Board, authorized Ms. Lott to receive RITA as part of her OCONUS-to-CONUS transfer. Under the FTR, a transferring employee is “eligible for . . . the RITA if [his or her] agency is transferring [him or her] from one permanent duty station to another, *in the interest of the Government*, and [the] agency’s reimbursements to [the employee] for relocation expenses result in [the employee] being liable for additional taxes.” FTR 302-17.5 (emphasis added). Although the FTR indicates that neither employees “[r]eturning from an overseas assignment for the purpose of separation from Government service” nor “new appointee[s]” are eligible for RITA, *id.* 302-17.6, the FTR does not exclude employees being transferred from OCONUS duty stations to CONUS duty stations from RITA eligibility. *See* FTR 302-3.101 tbl. C.

“Where an agency issued travel orders allowing the payment of certain relocation allowances to a transferred employee, the agency is presumed to have made the determination that the transfer was in the interest of the government.” *Rick A. Schmidt*, GSBCA 13966-RELO, 97-2 BCA ¶ 29,223, at 145,404; *see Ryoji Funai*, GSBCA 15452-RELO, 01-1 BCA ¶ 31,342, at 154,778 (reviewing history of agency’s actions in finding that agency, during relocation process, had viewed transfer as in the Government’s

interest). In fact, if the Navy had believed that Ms. Lott's transfer was *not* in the interest of the Government, the Navy would have lacked authority to grant Ms. Lott a RITA benefit. Having necessarily made that determination, the Navy may not now, after the fact, retract it.

Finding that the agency has already made a determination that Ms. Lott's transfer was in the interest of the Government necessitates that we reject the Navy's additional argument on this topic. The Navy suggests that a "return rights" placement is *always* in the primary interest of the returning employee rather than of the Government because the Government, by allowing an employee to exercise return rights to his or her former CONUS PDS, is simply complying with a statutory mandate. This argument is inconsistent with the precedent applicable to the Board. *See, e.g., Janice F. Stuart*, GSBICA 16596-RELO, 05-1 BCA ¶ 32,960, at 163,285-86 (finding that "return rights" transfer to original CONUS PDS was in the Government's interest rather than the employee's); *Riyoji Funai*, 01-1 BCA at 154,778-79 (same). Further, we recognize that the statute establishing the employee rotation program under which Ms. Lott was transferred OCONUS, including the transferring employee's return rights, was enacted "to advance the programs and activities of the Defense Establishment" consistent "with the missions of the Defense Establishment and sound principles of administration." 10 U.S.C. § 1586(a). Although return placement rights are intended as a benefit to civilian personnel transferring overseas, *Joe D. Anderson*, B-204952 (July 13, 1982), that benefit is provided to encourage civilian personnel to accept overseas positions that the Department of Defense needs them to fill. Under the statutory program, Ms. Lott was assigned OCONUS "at the request of the department concerned to duty outside the United States." *Id.* § 1586(b)(1). Given that the rotation program itself was created for the Government's overall benefit, we decline to preclude agencies from considering the benefit of the transferring employee's participation in that rotation program as a possible factor in evaluating "the interest of the Government" or automatically to consider all "return rights" transfers as in the employee's, rather than the Government's, interest.

Finally, we note that neither Ms. Lott nor the Navy has indicated whether, in returning from London to her position at Patuxent River, Ms. Lott executed another service agreement committing to remain in government service for at least twelve months after her return from OCONUS to CONUS, as the FTR indicates is a condition of relocation expense entitlements. *See* FTR 302-2.14(a). Without deciding whether such an additional service agreement is necessary in the circumstances here, "the absence of a signed service agreement [would not be] fatal to payment of relocation expenses where the employee in fact performs the required minimum service." *Thomas D. Mulder*, 65 Comp. Gen. at 905; *see Regina V. Taylor*, GSBICA 13650-RELO, 97-2 BCA ¶ 29,089, at 144,806. "[I]t 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." *Randal S. Kendrick*, CBCA 4096-RELO, 14-1

BCA ¶ 35,772, at 175,004 (quoting *Cathryn P. White*, B-195180 (Oct. 24, 1979)). Ms. Lott has already served more than twelve months at her Patuxent River PDS since returning from OCONUS, meaning that the Navy is not prejudiced from any absence of a new service agreement covering her most recent transfer.

Decision

The Navy's request for reconsideration is denied. The Navy shall pay Ms. Lott MEA of \$650.

*Harold D. Lester, Jr.*

HAROLD D. LESTER, JR.

Board Judge