



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

April 26, 2019

CBCA 6291-TRAV

In the Matter of BAKARI L. BIVINS

Bakari L. Bivins, Chesapeake, VA, Claimant.

Capt. Jorge R. Cuadros, Executive Officer, Naval Facilities Engineering Command Europe, Africa, Southwest Asia, Department of the Navy, FPO Area Europe, appearing for Department of the Navy.

O'ROURKE, Board Judge.

Claimant, Bakari L. Bivins, extended his overseas assignment for two years. The agency agreed to pay his round-trip expenses for travel home between assignments, provided he served at least twelve months of the extension. Because he failed to serve the minimum time, the agency required repayment of the travel expenses. Mr. Bivins asked the agency to waive the repayment, which the agency denied. We affirm the agency's decision.

Background

Mr. Bivins and his spouse are Navy civilian employees. In 2018, they completed a three-year tour of duty in Naples, Italy. As their tour came to an end, Mr. Bivins agreed to extend his assignment for another two years. His spouse and daughter returned to the United States after Mrs. Bivins accepted a position in Virginia. Under the terms of Mr. Bivins' extension agreement, he received renewal agreement travel (RAT), which is round-trip travel at government expense to return home between assignments. According to the agreement, if Mr. Bivins did not serve at least twelve months of the extension, he had to repay the RAT.

Mr. Bivins used his RAT to return to Virginia for a week in mid-July 2018. Approximately one month into his extended tour, he requested curtailment of his extension,

which the agency granted. Mr. Bivins cited family separation and financial hardship as the reasons for curtailing his extension tour. Not only would serving the extension separate him from his family for two years, but also he and his spouse would have to support two households—one in Italy and one in Virginia. He stated:

When I signed my extension in June 2018, I requested and was granted Renewable [sic] Agreement Travel. At that time, my intention was to remain in Naples for the duration of my tour, but this situation will preclude me from meeting that. I am requesting that since this is a request to execute my return rights within the NAVFAC Enterprise, and that I am doing so to avoid separation from my family, that I not be required to reimburse the command for that funding.

By letter dated October 3, 2018, the Navy disapproved Mr. Bivins' request to waive RAT reimbursement, but stated "your transportation agreement does not impact your ability to exercise return rights or apply for/accept another federal position." Essentially, the Navy permitted Mr. Bivins to depart early based on his fulfillment of his original three-year tour, but required that he repay the RAT. Mr. Bivins exercised his return rights and departed Italy on November 9, 2018. He asked the Board to review the denial of his waiver request.

Discussion

The purpose of RAT is to permit an employee who is stationed outside of the continental United States (OCONUS) to return home at government expense between two OCONUS tours of duty. *Daryl J. Steffan*, CBCA 3821-TRAV, 14-1 BCA ¶ 35,734, at 174,902 (citing *Jacqueline G. Sablan*, GSBCA 15961-TRAV, 03-2 BCA ¶ 32,309). This benefit was established by statute and requires an agency to pay from its appropriations the following expenses:

round-trip travel of an employee, and the transportation of his immediate family, but not household goods, from his post of duty outside the continental United States, Alaska, and Hawaii to the place of his actual residence at the time of appointment or transfer to the post of duty, after he has satisfactorily completed an agreed period of service outside the continental United States, Alaska, and Hawaii and is returning to his actual place of residence to take leave before serving another tour of duty at the same or another post of duty outside the continental United States, Alaska, and Hawaii under a new written agreement made before departing from the post of duty.

5 U.S.C. § 5728(a) (2012).

Although Mr. Bivins acknowledges that he did not fulfill the terms of his agreement, he nevertheless states that he does not understand how the waiver request could have been disapproved since “[his] reasoning for the request was in line with the [Joint Travel Regulations (JTR)] as agreed upon by [Human Resources Office] Naples.” We disagree.

Family separation and financial hardship are factors for consideration in response to a *curtailment* request, not for release from the terms of RAT. JTR 054912-B.2. The Government can deny RAT for various reasons, one of which is failure to complete a required period of service under a renewal agreement. JTR 055003-A.5; *Steffan*; see also *Steven T. Baseden*, CBCA 5864-TRAV, 18-1 BCA ¶ 36,939. Furthermore, the standard terms of the transportation agreement mandate repayment “unless the employee is separated for reasons beyond [his] control that are acceptable to the agency concerned,” which is not the situation here. The agency required reimbursement because Mr. Bivins did not fulfill the terms of his agreement. The agency properly denied the request for a waiver under the circumstances.

Decision

The claimant has shown no impropriety in the agency’s denial of his waiver request. Mr. Bivins must reimburse the Navy for RAT expenses.

Kathleen J. O’Rourke
KATHLEEN J. O’ROURKE
Board Judge