



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

January 27, 2020

CBCA 6521-RELO

In the Matter of HENRY J. MACIOG

Henry J. Maciog, APO Area Europe, Claimant.

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

BEARDSLEY, Board Judge.

Claimant, Henry J. Maciog, a civilian employee of the Department of the Army (Army), seeks the Board's review of the denial of his claim for separation travel and transportation allowances at government expense.

Factual Background

Claimant moved to Stuttgart, Germany, from Lorton, Virginia, in May 2016 to work as a program analyst for the United States Army at Headquarters, United States European Command (USEUCOM). Before his move, claimant signed an agreement entitled "DOD Transportation Agreement, Transfer of Civilian Employees Outside [the continental United States] CONUS" that explicitly stated that claimant was eligible for return travel expenses if he remained employed in the position for sixteen months. Claimant later extended his service in the position to twenty-two months, ending on March 31, 2018. On December 18, 2017, claimant signed a Request for Travel Orders form indicating that he intended to separate from the Army and move back to Virginia. On February 21, 2018, USEUCOM provided claimant with a Government-funded travel and transportation order to facilitate his return. The authorizations and entitlements granted by the order expired in one year from April 1, 2018.

Claimant received a tentative job offer to be a strategic planner with the United States Army Europe Operation Sustainment Directorate (USAREUR) in Wiesbaden, Germany, on February 22, 2018. Claimant asked Wiesbaden Civilian Human Resources about the continuation of his benefits in connection with the new position, to include “a transportation agreement” authorizing him to ship his household goods and car back to the United States. Wiesbaden Civilian Human Resources told claimant that he would “complete a new transportation agreement with this position to authorize return of HHG and household goods to US.”

On March 26, 2018, claimant signed a document entitled “Transportation Agreement Transfer in the Same or To a Different Overseas Geographic Locality.” This document stated that “[i]n connection with [his] transfer” from Stuttgart to Wiesbaden, claimant agreed to remain employed by the Federal Government for at least twelve months following the effective date of his transfer “in consideration of payment by the Federal Government for Travel, Transportation and other moving expenses.” Wiesbaden Civilian Human Resources made a final job offer to claimant on or about April 9, 2018. When asked when he would like to start, claimant indicated May 27, 2018, due to a planned vacation from April 25 to May 1. On April 24, 2018, the Civilian Personnel Advisory Center (CPAC) issued travel orders for a permanent change of station (PCS) from Stuttgart to Wiesbaden with an entrance on duty (EOD) date of May 27, 2018. Claimant noted that a “2-month gap [fifty-seven-day break in service], caused by internal administrative delays, developed between [his] Stuttgart and Wiesbaden employment.” Claimant resigned his position in Wiesbaden effective July 1, 2019, and returned to Virginia.

Discussion

The issue here is whether claimant is entitled to Government-funded separation travel back to CONUS from outside the continental United States (OCONUS). The Federal Travel Regulation (FTR) provides that an employee is eligible for relocation expense allowances if the employee is “returning to his/her place of residence after completion of a prescribed tour of duty for the purposes of separation from Government service.” 41 CFR 302-1.1(e)(2015) (FTR 302-1.1(e)).¹ Further, the FTR advises employees that “once you have

¹ An employee’s “entitlements and allowances for relocation are determined by the regulatory provisions that are in effect at the time [the employee] report[s] for duty at [his or her] new official station.” 41 CFR 302-2.3. “These entitlements and allowances include those for relocation back to the United States . . . upon separation from service at an OCONUS post of duty.” *Xavier F. Monroy*, CBCA 5676-RELO, 17-1 BCA ¶ 36,855, at 179,583 (quoting *Kenneth J. Dexter*, CBCA 3130-RELO, 13 BCA ¶ 35,236, at 172,998). Accordingly, the regulations to determine return travel rights upon separation from his duty station in Stuttgart are those that were in effect on March 2016, when claimant first reported to his duty station in Stuttgart.

completed your duty OCONUS as specified in your service agreement, your agency must pay one-way transportation expenses for you, for your family member(s), and for your household goods.” FTR 302-3.300.

“The Board has recognized that once an employee has successfully completed an OCONUS tour of duty, the agency must pay the cost of relocating that employee either to the home of record or other location selected by the employee, up to the constructive cost of returning the employee to his or her home of record at the time of transfer.” *Richard Gong*, CBCA 5824-RELO, 18-1 BCA ¶ 36,997, at 180,169 (quoting *Sheri L. Ellis-Smith*, CBCA 4022-RELO, 15-1 BCA ¶ 36,057, at 176,076); *see also Sara E. Young*, CBCA 3540-RELO, 14-1 BCA ¶ 35,607 (2013); *William G. Sterling*, CBCA 3424-RELO, 13 BCA ¶ 35,438, *reconsideration denied*, 14-1 BCA ¶ 35,483 (2013); *Michael W. Silva*, CBCA 1707-TRAV, 10-1 BCA ¶ 34,354). “Payment of these expenses is mandatory.” *Gong*, 18-1 BCA at 180,169 (quoting *Ellis-Smith*); *see also David L. Costello*, CBCA 2677-RELO, 12-1 BCA ¶ 35,012; *David K. Swanson*, GSBCA 13661-RELO, 97-1 BCA ¶ 28,794; *Thomas D. Mulder*, 65 Comp. Gen. 900 (1986); *William F. Krone*, B-213855 (May 31, 1984). Claimant successfully completed his sixteen-month OCONUS tour of duty in Stuttgart. He, therefore, was entitled to separation relocation expenses to CONUS.

Claimant, however, lost his separation travel and transportation allowances when he failed to use timely the orders issued by USEUCOM in February 2018. The Joint Travel Regulations (JTR), which also apply here, state that “[a] separating employee loses return travel and transportation allowances when the employee refuses to accept/use them after release from work status in the OCONUS position.” JTR 5572-C.2.a (Mar. 2016). In order to delay return for a reasonable period, the employee must make a written request. JTR 5572-C.2.b. Claimant did not ask for an extension.

Claimant’s fifty-seven-day break in service rendered him a local hire when he started the job with USAREUR. A civilian employee “must have no break in Government service when undertaking a PCS unless he or she separated from Government service due to a reduction in force (RIF) or transfer of function,” which claimant did not.² JTR 053701 (May 2018). To be entitled to reimbursement of separation travel expenses, claimant had to demonstrate that he was specifically authorized such reimbursement as a local hire. *Rebecca*

² Regulations in effect on the date of employee’s transfer to a duty station define return travel rights. *Ernestine Pouncy*, GSBCA 16859-RELO, 06-2 BCA ¶ 33,437, at 165,749. Thus, the regulations to determine return travel rights upon separation from his duty station in Wiesbaden are those that were in effect on May 27, 2018, when claimant first reported to his duty station in Wiesbaden.

B. Harpole, GSBCA 16589-TRAV, 05-2 BCA ¶ 33,041, at 13,764. Claimant's re-employment with the Army after a fifty-seven-day break in service did "not legally resuscitate the entitlement he unfortunately relinquished." *John M. Pemberton*, GSBCA 15372-TRAV, 01-2 BCA ¶ 31,541, at 155,713.

Claimant did not sign an initial service agreement with USAREUR authorizing separation travel and transportation expenses. "An initial agreement is a recruitment incentive, not an entitlement, for locally hiring a civilian employee with an actual residence in the CONUS . . . to accept Federal employment in an area OCONUS. An individual is not automatically granted an initial agreement when he or she meets eligibility requirements." JTR 054908-B.³ "Eligibility for . . . return transportation to the actual residence must be determined at the time of appointment or when the civilian employee loses eligibility for return travel and transportation allowances. The eligibility decision must be recorded in the initial agreement." JTR 054908-B.2. Claimant's transportation agreement for the USAREUR assignment, signed on March 26, 2018, did not specifically authorize reimbursement of return travel and transportation for claimant, his dependent, or his household goods.

We recognize the fact that claimant relied to his detriment on incorrect information regarding his relocation benefits; however, the Board "cannot order payment of a relocation expense that is contrary to statute or regulation." *Richard K. Guffey*, CBCA 5983-RELO, 18-1 BCA ¶ 37,021, at 180,282 (citing *Charles M. Russell*, GSBCA 16000-RELO, 03-1 BCA ¶ 32,176, at 159,079).

Decision

For the foregoing reasons, the Board denies claimant's request for separation travel and transportation expenses.

Erica S. Beardsley

ERICA S. BEARDSLEY

Board Judge

³ Claimant did not satisfy the conditions for receiving a mandatory service agreement for eligible locally hired civilian employees. JTR 054908, tbl. 5-104.