



UNITED STATES  
CIVILIAN BOARD OF CONTRACT APPEALS

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April 29, 2020

CBCA 6727-RELO

In the Matter of MARK R. BORAWSKI

Mark R. Borawski, Dover, NJ, Claimant.

Colonel Joseph O. Ritter, Command Inspector General, United States Army Installation Management Command, Joint Base San Antonio Fort Sam Houston, TX, appearing for Department of the Army.

**GOODMAN**, Board Judge.

The claimant, Mark Borawski, is a civilian employee of the Department of the Army. He has requested that this Board review the agency's denial of reimbursement of costs incurred as the result of a permanent change of station (PCS) move.

Background

In June 2015, when claimant was assigned to the U.S. Army Installation Command, Pacific Region, at Fort Shafter, Hawaii, he accepted a position with the U.S. Army Installation Management Command, Europe Region, in Germany. His travel orders authorized nontemporary storage (NTS) of household goods (HHG) before he transferred to Germany, and he placed a portion of his HHG in NTS in Benecia, California.

Claimant and the agency executed an agreement entitled "Statutory Reemployment Rights Agreement," which read in relevant part:

I understand that this overseas assignment is part of the Army's rotation program and that my selection for this overseas tour of duty entitles me to statutory reemployment rights under 10 USC 1586 to my former position upon completion of the initial tour of duty or upon completion of any approved

extension. I am aware that if an extension is not approved after completion of my initial tour of duty that I may be directed to return to my former position in the United States and that such action is not grievable.

I also understand that statutory reemployment rights are authorized for the initial tour and approved extensions for an aggregate period of [sic] not to exceed 5 years. I understand that failure to apply for the exercise of these rights upon expiration of the 5-year period may result in action directing my return to my former position. If I fail to comply with such directed action, I understand that my statutory reemployment rights will expire and that I will be subject to separation from the service. I understand that such directed return is not a grievable matter under the DA grievance system.

After transferring to Germany, claimant's positions in Hawaii and Germany were eliminated as a result of a series of reorganizations across the U.S. Army Installation Management Command, and claimant could not return to the position in Hawaii. He was enrolled in the Department of Defense (DoD) Priority Placement Program (PPP)<sup>1</sup> and placed in a position located at Picatinny Arsenal, New Jersey, where he reported in December 2018. Claimant did not arrange for delivery to his new duty station of the HHG he had placed in NTS. He states:

I placed the HHG in question into NTS with the assurance that I would receive them back in Hawaii, my "next duty station" IAW [in accordance with] the signed Reemployment Rights Agreement. The items are unique to my home in Hawaii and superfluous elsewhere. I have no intention to receive them anywhere besides Hawaii.

In June 2019, when claimant's entitlement to NTS storage expired pursuant to regulation, he began paying the monthly storage costs for the NTS. On October 11, 2019, he submitted an administrative grievance to Headquarters, Installation Management Command, requesting reimbursement of storage fees he had paid to that date, payment of future monthly expenses of NTS, and transportation costs to deliver his HHG in NTS at some unspecified date in the future to Hawaii. On December 12, 2019, the agency determined that claimant had been paid all costs for NTS to which he was entitled by regulation, and

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<sup>1</sup> The agency states that the PPP is a DoD-wide automated program to assist in the placement of employees adversely affected by actions such as reduction-in-force, base closures, realignments, consolidations, contracting out, position classification decisions, rotation from overseas, and transfer of function.

informed claimant that the Government is responsible for shipping the HHG in NTS to his duty station, but not to his former duty station in Hawaii.

Claimant asks this Board to review the agency's decision not to pay additional costs of NTS.

### Discussion

The Joint Travel Regulations (JTR), at Chapter 5: Permanent Duty Travel, Part B: Civilian Employees Only/Sec 5d: HHG (NTS), effective as of October 1, 2014, when claimant was transferred from Hawaii to Germany, contained at section 5660 the following time limitations for NTS made necessary by claimant's permanent change of station:

#### C. Time Limitation (FTR § 302-8.203)

1. NTS, at Gov't expense, may be authorized for a period NTE [not to exceed] the tour of duty.
2. NTS may be authorized for subsequent tours of duty at the same or other OCONUS [Outside the Continental United States] PDS [permanent duty station] if the eligibility conditions are still met.
3. When an employee is no longer eligible for NTS (eligibility ends on the last day of work at the PDS), the storage at Gov't expense may continue until the beginning of the 2nd month after the month that eligibility ends *unless* the losing OCONUS command extends the period.
4. The losing OCONUS command may extend the period of NTS at Gov't expense for up to a total of 90 days (i.e., up to 30 days prior to the time the tour begins and up to 60 days after the last day of work at the PDS).

The agency maintains that claimant has been paid the costs to which he is entitled by regulation, as his entitlement to NTS ended on the last duty day at his OCONUS assignment, with discretionary extensions. Claimant asserts he is entitled to additional costs of NTS to compensate him until he is able to return to Hawaii and have his HHG shipped there, as the agency "renege" on his statutory reemployment rights agreement by not allowing him to return to his former position in Hawaii.

Claimant supports his position that the agency reneged on his statutory reemployment rights agreement by describing the circumstances of his employment—the agency’s elimination of his positions in Hawaii and Germany, its denial of his request to extend his OCONUS tour of duty, his involuntary enrollment in the PPP, and his involuntary transfer to the CONUS. These circumstances impacted his intent to return to Hawaii and have his HHG shipped there.

Claimant’s expectation and hope to return to his prior position in Hawaii after his rotational assignment in Germany is understandable. We cannot determine from the record whether claimant was informed of the possibility that he might not be able to return to his former position in Hawaii, but the statute governing reemployment rights which is referenced in his statutory rights reemployment agreement contains provisions in the event of such circumstance. *See* 10 U.S.C. §§ 1586 (c)(1)-(5) (2012).

The issue before us is solely claimant’s request for additional costs of NTS. There is no statutory or regulatory requirement that obligates the Government to return items in NTS to the former PDS if the employee does not return there, or to reimburse the costs of continued NTS in excess of the regulatory limit until the employee ultimately returns to his former PDS. The Government cannot make payment of monies that are not authorized by statute and regulation. *Teresa K. Scalise*, CBCA 6568-RELO, 19-1 BCA ¶ 37,470.

#### Decision

The claim is denied.

Allan H. Goodman  
ALLAN H. GOODMAN  
Board Judge