



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

April 25, 2011

CBCA 2044-RELO

In the Matter of RANDY C. DAVIDSON

Martin J. Cirkiel of Cirkiel & Associates, Round Rock, TX, appearing for Claimant.

James E. Hicks, Office of Chief Counsel, Drug Enforcement Administration, Department of Justice, Springfield, VA, appearing for Department of Justice.

McCANN, Board Judge.

Randy C. Davidson asks the Board to set aside the Drug Enforcement Administration's (DEA's) demand that he repay \$50,174.95 in relocation benefits. DEA paid him this amount after his October 31, 2009, transfer from the El Paso Intelligence Center in Texas to the Sierra Vista Resident Office in Arizona. The DEA's demand that Mr. Davidson repay the funds was proper because the reasons that Mr. Davidson provided for not fulfilling his agreement to remain in government service for twelve months after the date of the transfer were within his control and were not acceptable to the agency.

Background

Prior to relocating to Sierra Vista, Arizona, Mr. Davidson signed a service agreement whereby he agreed to remain in the employ of the United States Government for a period of not less than twelve months after the date on which he reported for duty at the new duty station. The agreement specifically provided:

I agree that if I fail to fulfill the terms of this agreement by resigning, voluntarily retiring, vacating my position with authority . . . before the twelve-month period, I will repay the United States Government all costs the Drug Enforcement Administration has paid towards my relocation expenses

including the withholding tax allowance (WTA) and the relocation income tax allowance (RITA).

With regard to the move, the DEA paid to Mr. Davidson, or on his behalf, the Prudential Relocation Services fee of \$42,000, household goods transportation costs of \$6943.62, and a Miscellaneous Expenses Allowance of \$1231.33, for a grand total of \$50,174.95.

Mr. Davidson contends that he did not retire voluntarily, but was forced to retire due to a hostile work environment. In this regard, Mr. Davidson filed a complaint with the Merit Systems Protection Board (MSPB). The MSPB has jurisdiction to determine whether an employee's retirement was voluntary or involuntary. If an agency coerced an employee to make the decision to retire in a manner that deprived him of his free choice, the MSPB will take jurisdiction. *Reining v. General Services Administration*, 68 M.S.P.R. 513, 519-20 (1995). In this case, the MSPB found against Mr. Davidson, indicating that he had not set forth a case that would support a holding that his retirement was involuntary. *Davidson v. Department of Justice*, MSPB DE-0752-11-0046-I-I (Feb. 18, 2011) (unpublished).

Discussion

When a government employee is transferred in the interest of the Government, he or she is entitled to be reimbursed for relocation expenses. 5 U.S.C. § 5724(a) (2006). Reimbursement for such relocation costs is conditioned upon an employee entering into an agreement to remain in government service for a period of not less than twelve months. *Id.* § 5724(i); see also 41 CFR 302-2.13 (2009). The Federal Travel Regulation explains that if an employee does not remain in the service of the Government for the required length of time, he or she is subject to the following penalty.

Will I be penalized for violation of my service agreement?

Yes, if you violate a service agreement (other than for reasons beyond your control and which must be accepted by your agency), you will have incurred a debt due to the Government and you must reimburse all costs that your agency has paid towards your relocation expenses

41 CFR 302-2.14.

The claimant has the burden of proof in a relocation case. *Gary Twedt*, GSBCA 16905-RELO, 06-2 BCA ¶ 33,433. Furthermore, this Board has recognized:

It is within an agency's discretion to determine whether a separation from service which appears to be voluntary was for a reason beyond the employee's control and acceptable as a reason for not fulfilling the terms of a service agreement. We will not question the agency's exercise of its discretion so long as it has a reasonable basis.

Paula A. Shimata, CBCA 1135-RELO, 08-2 BCA ¶ 33,901, at 167,775 (citations omitted). Accordingly, our inquiry is limited to whether the agency reasonably exercised its discretion.

In this instance Mr. Davidson appealed to the MSPB, contending that his retirement was involuntary. The MSPB reviewed Mr. Davidson's allegations and determined that, even if they were all true, he still had not established a credible case for claiming that his retirement from the Government was involuntary due to a hostile work environment. Mr. Davidson did not appeal the decision and the appeal period has run.

In light of the MSPB's decision, we find no abuse of discretion here. Mr. Davidson did not fulfill his agreement and obligation to work for the Government for twelve months after his transfer. Accordingly, he has failed to sustain his burden of proof that he is entitled to retain the travel costs paid to him in the amount of \$50,174.95.

The claim is denied.

R. ANTHONY McCANN
Board Judge