



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

April 11, 2012

CBCA 2677-RELO

In the Matter of DAVID L. COSTELLO

David L. Costello, APO, Area Europe, Claimant.

James F. Hayes, Assistant General Counsel, Defense Commissary Agency, Department of the Army, Fort Lee, VA, appearing for Department of the Army.

WALTERS, Board Judge.

Claimant, David L. Costello, who had been a meat plant manager at the Lakenheath Commissary in England, in 1997 was transferred by his agency, the Defense Commissary Agency, to a position as a meat plant manager in Germany at the Rhein Main Commissary, European Region. This transfer was mandatory, such that failure to accept it would have resulted in “disciplinary action, up to and including removal.” At the time of the transfer to Germany, Mr. Costello’s residence was in Lakenheath, England. He executed a transportation agreement in connection with that transfer, under which he would be eligible for reimbursement of transportation costs back to his place of actual residence, Lakenheath, so long as he continued in employment at the Rhein Main Commissary for at least thirty-six months. In March 1998, with the Government’s closure of the Rhein Main meat processing plant, Mr. Costello was reassigned to the Ramstein, Germany, meat processing plant and was assured at that time that his January 1997 transportation agreement would nonetheless be honored. In November 2010, Mr. Costello was again reassigned, to his current position as facility manager of the Central Distribution Center in Ramstein.

In 2011, in advance of his planned retirement and separation from government service, which is now scheduled for May 2012, Mr. Costello incurred \$8618 to return his spouse and his household goods to Lakenheath, England, and sought reimbursement of those

costs. He had requested this early return to England for his wife and the household goods, in order that his wife could care for her mother, who was ill.¹ The agency, which had concurred in Mr. Costello's request for this early return, ultimately refused reimbursement of the transportation costs. It did so purportedly because, as a "local hire," Mr. Costello should not have been given a transportation agreement and was never eligible for return transportation expense reimbursement. Mr. Costello contests the agency's position and, for the reasons explained below, the Board sustains his challenge.

Discussion

Where a federal employee is transferred to a position in government service outside the continental United States, 5 U.S.C. § 5724(d) provides that "his expenses of travel and transportation to and from the post shall be allowed to the same extent and with the same limitations prescribed for a new appointee under section 5722 of [Title 5]." That provision does not limit the benefit to employees located at a post within the continental United States at the time of the transfer. As to 5 U.S.C. § 5722, that statutory provision calls for reimbursement of "travel expenses of a new appointee and transportation expenses of his immediate family and his household goods and personal effects," both from and to his "actual residence at the time of his assignment to duty outside the continental United States." That provision does not limit the benefit to situations where the "actual residence" is located within the continental United States.² Reimbursement of travel and transportation costs under that section is conditioned on the employee remaining in the Government service for a minimum period of time. Reimbursement under 5 U.S.C. § 5722(a)(1) for travel and transportation costs from the place of residence to the overseas appointment location is

¹ Statute permits reimbursement of the costs of the prior return of family members and household goods when the public interest requires their return "for compelling personal reasons of a humanitarian or compassionate nature, such as may involve physical or mental health, death of a member of the immediate family, or obligation imposed by authority or circumstances over which the individual has no control." 5 U.S.C. § 5729 (2006).

² While the Joint Travel Regulations and Federal Travel Regulation, when implementing the statutory provisions for travel and transportation cost reimbursement for overseas employees, both speak in terms of return to the continental United States upon separation, neither expressly precludes return transportation to an employee's actual residence at the time of appointment when it is also outside the continental United States. Moreover, the regulations expressly allow reimbursement of post-separation return transportation to an alternate overseas location, provided that the cost does not exceed what it would have been for transport to the actual residence. JTR C5085-B; *Michael W. Silva*, CBCA 1707-TRAV, 10-1 BCA ¶ 34,354; *Thelma Grimes*, 63 Comp. Gen. 281 (1984).

obtainable only upon execution of an agreement undertaking to serve for such a period of time. To obtain reimbursement of the employee's return costs back to the place of residence, under 5 U.S.C. § 5722(a)(2), the statute requires a minimum period of "not less than one nor more than 3 years prescribed in advance by the head of the agency," if employed in a non-teaching position, unless the individual is "separated for reasons beyond his control which are acceptable to the agency concerned." 5 U.S.C. § 5722(b), (c).

Here, the agency, in its transportation agreement, had specified a thirty-six month (three year) service period. As noted above, Mr. Costello was transferred to the Ramstein plant prior to completing the thirty-six months at Rhein Main. This was brought about by the Rhein Main plant closure, i.e., for reasons beyond Mr. Costello's control. The transfer to Ramstein was, of course, acceptable to the agency, which had indicated to him that his January 1997 transportation agreement, and its attendant benefits, would carry forward to his subsequent assignment in Germany. There is no question either that Mr. Costello was in government service in Germany for more than thirty-six months or that Lakenheath, England, was his actual residence in 1997, when he was appointed to the Rhein Main position.

The agency's doubts about Mr. Costello's eligibility for transportation expense reimbursement here stem from its notion that Mr. Costello must be disqualified as a "local hire," since, at the time of his appointment to Rhein Main, he was not resident in the continental United States, but rather in England. In contrast with the situation we addressed in *Manuel S. Figueroa*, CBCA 486-TRAV, 07-1 BCA ¶ 33,540, where the employee was hired in Germany for a position in Germany and was denied "return travel" to the United States, Mr. Costello had been first hired as a federal civilian employee at an overseas location other than Germany. In 1997, at the time of his transfer, he was not already a German resident, but an English resident who had to be relocated from England to Germany. Under these circumstances, because he fulfilled the terms of his transportation agreement, he was entitled under 5 U.S.C. §§ 5722(c) and 5724(d) to reimbursement of the costs of his return to his place of residence in England.

Decision

The claim is granted.

RICHARD C. WALTERS
Board Judge