UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

February 10, 2015

CBCA 4186-RELO, 4359-RELO

In the Matter of DOUGLAS V. HAMILTON

Douglas V. Hamilton, Aguadilla, PR, Claimant.

Suzanna Hartzell-Baird, Office of Assistant Chief Counsel, U.S. Customs and Border Protection, Department of Homeland Security, Indianapolis, IN, appearing for Department of Homeland Security.

DANIELS, Board Judge (Chairman).

Douglas V. Hamilton, who was an employee of the Department of Homeland Security's Bureau of Customs and Border Protection (CBP) in Aguadilla, Puerto Rico, asks the Board to review two determinations of his agency with regard to relocation benefits. In CBCA 4186-RELO, he asks us to reverse the agency's decision not to pay him relocation benefits associated with his move to Puerto Rico. In CBCA 4359-RELO, he challenges the decision not to pay him such benefits associated with his resigning from the agency and moving to a location in the United States. On both counts, we hold for the agency.

Background

In early 2012, Mr. Hamilton was employed by the Department of the Army in Washington State. He had responded to a vacancy announcement by CBP for air interdiction agents at any of numerous locations in the United States and Puerto Rico. The announcement stated prominently: "**Relocation Expenses**: Relocation expenses ***will not*** be paid."

Mr. Hamilton was selected for a position. He left the Army and joined CBP in Puerto Rico in May 2012. The job he accepted was at a lower rate of pay than he had been receiving

as an Army employee. CBP did not ask Mr. Hamilton to sign a service agreement to remain in Puerto Rico for any particular length of time, and he did not sign such an agreement.

Mr. Hamilton tells us that when he accepted the position, CBP told him that he would be assigned to the post in Puerto Rico for three years and then transferred back to the United States, but that after he arrived in Puerto Rico, agency officials said that his position there was permanent.

Mr. Hamilton resigned from CBP in October 2014. He asked about relocation benefits for a move back to the United States. Although CBP postures that it has not made a determination as to such benefits, in its response to his claim, the agency says that he cannot become eligible for the benefits.

Discussion

Under statute, agencies "may pay . . . travel expenses of a new appointee and transportation expenses of his immediate family and his household goods and personal effects from the place of actual residence at the time of appointment to the place of employment outside the continental United States." 5 U.S.C. § 5722(a)(1) (2012). "When an employee transfers to a post of duty outside the continental United States, 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." *Id.* § 5724(d). An agency must pay these expenses only if the employee is "transferred in the interest of the Government." *Id.* § 5724(a)(1). "When a transfer is made primarily for the convenience or benefit of an employee, . . . his expenses of travel and transportation . . . may not be allowed or paid from Government funds." *Id.* § 5724(h).

Although most transfers benefit both the Government and the employee, for purposes of determining eligibility for the payment of relocation benefits, the transfer must be characterized as being for the principal advantage of one or the other. *Gary L. Dissette*, CBCA 526-RELO, 07-1 BCA ¶ 33,572; *Janice F. Stuart*, GSBCA 16596-RELO, 05-1 BCA ¶ 32,960. Here, as CBP points out, there are two reasons for concluding that Mr. Hamilton's move to Puerto Rico was primarily for the convenience or benefit of the employee. First, the job announcement to which he responded made plain that relocation benefits would not be paid. *William G. Sterling*, CBCA 3424-RELO, 13 BCA ¶ 35,438; *Dissette*. Second, the transfer was to a lower-graded position. *Timothy A. Burgess*, GSBCA 16725-RELO, 05-2 BCA ¶ 33,103. Mr. Hamilton was on notice when he applied for the position that relocation benefits would not be available, and he should not be surprised now to learn that the agency's position is consistent with its promise. His claim in CBCA 4186-RELO is denied.

Just as statute permits an agency to pay travel and transportation expenses of an employee who transfers to a place of employment outside the continental United States, the law also permits an agency to pay "these expenses on the return of an employee from his post of duty outside the continental United States to the place of his actual residence at the time of assignment to duty outside the continental United States." 5 U.S.C. § 5722(a)(2). The law specifies that agencies must, in implementing this authorization, follow regulations prescribed by the Administrator of General Services. *Id.* These regulations, known as the Federal Travel Regulation, state that once an employee has completed his tour of duty outside the United States, his agency must pay for return relocation expenses of the employee, his family members, and his household goods. 41 CFR 302-3.300 (2014).

CBP presents us with a veritable cornucopia of arguments as to why it should not have to pay for Mr. Hamilton's return expenses. One of the arguments is sufficient to resolve this case, so we need not address the others. As stated above, return relocation expenses must be paid only after an employee has completed his tour of duty. Such a tour is supposed to be prescribed in a service agreement, but where as here such an agreement was not signed, if the employee "has served [outside the continental United States] at least the length of time generally held by the agency to constitute a tour of duty," return relocation benefits must be paid. *Sterling*. Statute provides that the minimum period of service outside the United States, for the purpose of qualification for return relocation benefits, is to be "not less than one nor more than 3 years prescribed in advance by the head of the agency." 5 U.S.C. § 5722(c)(2).[1] CBP says that the standard tour of duty in Puerto Rico is at least three years, and Mr. Hamilton acknowledges that before he began work there, he was told that the tour would last three years. By resigning less than three years after he began working in Puerto Rico, he lost his right to relocation benefits associated with a return to the United States. His claim in CBCA 4359-RELO is denied.

STEPHEN M. DANIELS
Board Judge

[1] There is an exception to this rule: if an employee does not serve for the prescribed period, he may still receive return relocation benefits if he is "separated for reasons beyond his control which are acceptable to the agency concerned." 5 U.S.C. § 5722(c). We agree with CBP that Mr. Hamilton does not qualify for an exception to the rule.