UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

September 4, 2015

CBCA 4797-RELO

In the Matter of CHRISTOPHER R. CHIN-YOUNG

Christopher R. Chin-Young, Alpharetta, GA, Claimant.

William Vines, Office of the Regional Counsel, Federal Aviation Administration, Atlanta, GA, appearing for Department of Transportation.

DANIELS, Board Judge (Chairman).

Christopher R. Chin-Young asked us in 2014 to direct the Federal Aviation Administration (FAA) to grant him relocation benefits associated with a transfer from Virginia to Georgia in 2008. Although he did not initially provide us with documentation relevant to the claim, we allowed him, in response to his request, to submit such documentation. After reviewing his submittal, we denied the claim. We explained that in relocation cases, "[t]he burden is on [a] claimant to establish . . . the liability of the agency, and the claimant's right to payment," and Mr. Chin-Young did not prove either that he was transferred as alleged or that he was entitled to relocation benefits if he was transferred. *Christopher R. Chin-Young*, CBCA 3734-RELO, 14-1 BCA ¶ 35,688 (quoting Board Rule 401(c) (48 CFR 6104.401(c) (2013)). Mr. Chin-Young then asked us to reconsider our decision after giving him additional time to produce relevant documentation. In light of the long period of time between the purported transfer and the filing of the claim with us, and the fact that we had given him two months to supplement his original filing with all relevant documents, we refused to grant him still more time to file materials. We denied the request for reconsideration. *Christopher R. Chin-Young*, CBCA 3734-RELO, 14-1 BCA ¶ 35,720.

In June 2015, Mr. Chin-Young once again asked us to grant him relocation benefits associated with the 2008 move from Virginia to Georgia. He characterized this request as being "refiled" and "continuing" as to the earlier claim and said that he had attached "all

pertinent paperwork" to substantiate the claim. He enclosed a copy of a Standard Form 50, Notification of Personnel Action, which shows that he began a job with the FAA in Georgia in February 2008, as a transferee from the Department of Defense. He also enclosed what purports to be a copy of an August 2007 vacancy announcement which says nothing about relocation benefits and an April 2008 vacancy announcement which says "PCS [permanent change of station] Expenses will be paid."

In response, the FAA makes the following assertions: (1) Mr. Chin-Young maintains that his claim is based on his "employment contract." To the extent that the claim arises from a contract, the Board does not have jurisdiction over it. "[T]he Board does not have jurisdiction to decide . . . contract disputes arising out of . . . contracts entered into under the FAA's Acquisition Management System." *Magwood Services, Inc. v. Department of Transportation*, CBCA 3630, 14-1 BCA ¶ 35,605. (2) There is no merit to Mr. Chin-Young's claim. The actual August 2007 vacancy announcement states, "No PCS Expenses will be paid." No selection was made by the agency from this announcement. The April 2008 vacancy announcement was issued after Mr. Chin-Young began work with the FAA, so it is not relevant to his move.

The FAA's suggestion that we lack jurisdiction over this case is not well taken. Our conclusion that we do not have jurisdiction to decide contract disputes arising out of contracts entered into under the FAA's Acquisition Management System is not relevant to this case, since this dispute does not arise out of such a contract. Nor, indeed, does the dispute arise out of any contract. "The courts have made clear that absent specific legislation, federal employees derive the benefits and emoluments of their positions from appointment rather than from any contractual or quasi-contractual relationship with the Government, so the employees' entitlement to benefits must be determined by reference to statute and regulation, rather than to ordinary contract principles." *Ann R. Facchini*, CBCA 2861-TRAV, 12-2 BCA ¶ 35,161 (citing *United States v. Larionoff*, 431 U.S. 864, 869 (1977); *Schism v. United States*, 316 F.3d 1259, 1274-76 (Fed. Cir. 2002) (en banc); *Chu v. United States*, 773 F.2d 1226, 1228-29 (Fed. Cir. 1985); *Zucker v. United States*, 758 F.2d 637, 640 (Fed. Cir. 1985)); *see also Jenny L. W. Jones*, GSBCA 15808-RELO, 02-2 BCA ¶ 31,894; *Synita Revels*, GSBCA 14935-RELO, 00-1 BCA ¶ 30,716 (1999). Mr. Chin-Young's assertion that his claim is based on an employment contract is not correct. We do have the authority to settle claims against the United States which involve expenses incurred by federal civilian employees for relocation expenses incident to transfers of official duty station. 31 U.S.C. § 3702(a)(3) (2012); GSA Order ADM P 5450.39D, at 157 (Nov. 16, 2011). Mr. Chin-Young has made such a claim, so we may settle it.

And we have already settled this claim. We issued decisions in 2014 denying the claim for lack of proof, and later denying a request for reconsideration of our determination. As we have explained:

> When a final judgment has been entered on the merits of a case, it is final as to the claim or demand in controversy. This is true not only as to every matter which was offered and received, but also as to any other matter which might have been offered for that purpose. *Nevada v. United States*, 463 U.S. 110, 129-30 (1983). The doctrine of res judicata will bar a second suit raising claims based on the same set of transactional facts. *Ammex, Inc. v. United States*, 334 F.3d 1052, 1055 (Fed. Cir. 2003). The doctrine of res judicata applies to the final judgment of an administrative tribunal, such as a board of contract appeals that resolved disputed issues of fact properly before it which the parties have had an adequate opportunity to litigate. *United States v. Utah Constr. & Mining Co.*, 384 U.S. 394, 422 (1966).

Corners & Edges, Inc. v. Department of Health & Human Services, CBCA 1002, 09-2 BCA ¶ 34,140, at 168,781. The Court of Appeals for the Federal Circuit has used somewhat more colorful prose to elucidate the same point: "There is no support in law for repeated bites at the apple. On the contrary, the law whenever possible reaches for repose." *Burson v. Carmichael*, 731 F.2d 849, 854 (Fed. Cir. 1984). We apply these principles to cases involving federal employees' claims for expenses of travel or relocation. *Dana G. Kay*, CBCA 2506-RELO, 12-1 BCA ¶ 34,982.

The parties in the case now before us are identical to those in the case we decided earlier, the first case proceeded to a final judgment on the merits, and the second case is based on the same set of transactional facts as the first. Consequently, the doctrine of res judicata applies. *Corners & Edges*, 09-2 BCA at 168,781 (citing *Ammex*, 334 F.3d at 1055). Having decided Mr. Chin-Young's claim, we decline to consider it again. The case is dismissed.

STEPHEN M. DANIELS
Board Judge