



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

June 9, 2015

CBCA 4351-RELO

In the Matter of BRENDAN J. MOYNAHAN

Brendan J. Moynahan, Saint Ignatius, MT, Claimant.

Rena Fugate, National Park Service, Department of the Interior, Denver, CO, appearing for Department of the Interior.

VERGILIO, Board Judge.

The claimant, Brendan J. Moynahan, an employee of the National Park Service, Department of the Interior, seeks reconsideration of the Board's decision denying his claim to receive relocation benefits. *Brendan J. Moynahan*, CBCA 4351-RELO (Mar. 24, 2015). The claimant seeks a comprehensive review of the facts. Such already occurred. The claimant takes issue with factual findings and legal conclusions of the Board. The claimant has not demonstrated a factual or legal error so as to merit reconsideration.

The claimant states that, contrary to the findings of the Board, the distance between the old and new duty station exceeds fifty miles, as determined by an agency employee during the consideration of the claimant's inquiries. That employee initially determined that the distance between duty stations using Google Maps is 49.7 miles, and later determined that "a new Mapquest showing the en route distance (zip code to zip code) from old to new duty station is 50.12 miles." The record does not establish the applicability of zip code to zip code mileage. The agency ultimately deemed this to be a short-distance move, thereby, discounting the conclusiveness of the statement in the record that the distance between the old and new duty stations was 50.12 miles. The record contains no supporting documentation for the claimant's assertion that the distance between duty stations is at least fifty miles. Use of Google Maps shows a distance of fewer than fifty miles. The claimant, who bears the burden of proof, did not and has not with the request for reconsideration, demonstrated a distance of at least fifty miles. In any event, the payment of temporary

quarters subsistence expenses (TQSE), for which this distance is relevant, is discretionary. The agency did not authorize TQSE reimbursement for this claimant, such that the claimant is not entitled to the relief requested.

In the underlying opinion, the Board stated: “Moreover, the claimant received a written email message before the start date at the new duty station that the move would be considered as short-distance under the regulations, such that the claimant could not be reimbursed for the various expenses.” The claimant asserts that although prior to relocating the agency informed him, in writing, that this would be a short-distance move, he was informed that additional approval was required for the reimbursement of various expenses. Although the claimant believed that approval for reimbursement would be forthcoming, the claimant never received additional approval, prior to the move or thereafter. The short-distance nature of the move precluded reimbursement of some expenses; the agency opted not to approve TQSE. While the job announcement indicated that relocation benefits were authorized, that language does not create an entitlement to benefits when benefits are inconsistent with statute and regulation, or regulation requires specific approval that did not occur. This situation is different from cases now raised by the claimant which address an employee’s ability to recover specific benefits when there is a statutory or regulatory entitlement to such benefits even if the travel authorization fails to identify such benefits.

Similarly, while the claimant now seeks to rely on permanent change of station guidance provided by the agency which identify mandatory and discretionary entitlements, those guidelines have to be read in the context of statute and regulation. References to mandatory entitlements do not override the basic requirement that the fifty-mile distance test (the new duty station is at least fifty miles further from the employee’s current residence than the old duty station is from that residence) is satisfied or the appropriate individual has authorized an exception as being in the best interest of the Government. The new information, which post-dates the relocation here at issue, does not suggest a contrary result.

The agency determined that it was not in the best interest of the Government to make an exception to the fifty-mile threshold for receipt of relocation benefits. The claimant contends on reconsideration that the agency inappropriately considered its budget when not making an exception. The claimant’s assertions about the budgetary considerations remain conjectures on the existing record. However, even assuming that budgetary constraints were a factor, an agency may consider its budget when making this determination concerning the best interests of the Government. While budgetary constraints may not limit an employee’s right to recover benefits for which there is entitlement under statute and regulation, budget may be considered for discretionary matters. *Edmund A. Lesinski*, CBCA 2113-RELO, 11-1 BCA ¶ 34,621 (“Because the regulations allow the option to be offered at the agency’s discretion, the program’s availability may change from time to time depending on the

agency's policy and budget considerations."); *Daniel D. LaChance*, GSBCA 16911-RELO, 06-2 BCA ¶ 33,396 ("The agency has decided for financial and budgetary reasons not to authorize claimant to receive TQSE. We cannot conclude that the agency's determination was an abuse of discretion."). We found the facts in this case do not support any abuse of discretion.

The claimant raises no appropriate basis to reconsider the underlying decision. The request is denied.

JOSEPH A. VERGILIO
Board Judge