Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

August 3, 2001

GSBCA 15320-RELO

In the Matter of MS. ROBERTA B.

Robert H. Hunter of Fort Lauderdale, FL, appearing for Claimant.

Mona B. Alderson and Jodie J. Dalton, Office of General Counsel, Central Intelligence Agency, Washington, DC, appearing for Central Intelligence Agency.

BORWICK, Board Judge.

Ms. Roberta B., an employee of the Central Intelligence Agency, entered into a service abroad agreement to stay at her post for a minimum of twelve months. Claimant left her post before she completed her twelve-month minimum service requirement. The agency established a debt for the costs incurred in transporting her to and from her overseas post. Claimant filed a claim at this Board contesting that determination. We deny the claim, as we conclude that the agency did not act arbitrarily or capriciously in deciding that claimant had failed to show sufficient cause under statute and regulation for release from the conditions of her service abroad agreement.

Background

The facts as shown by the record are as follows.[1] On July 29, 1996, claimant signed a service abroad agreement for an assignment outside the continental United States (CONUS). She agreed to serve in her post for twenty-four months. The service agreement provided that if claimant terminated her assignment before completion of twelve months of creditable service following the

[1] Document summaries and the opinion have been reviewed by the agency's Information Review Office (IRO) to ensure that classified material is not mentioned in the opinion. The opinion was prepared at Board offices using a summary, redacted by the IRO, of the classified record reviewed by the Board at agency offices. This opinion is releasable to the public because it does not contain classified material.

date of her arrival, claimant would be required to reimburse the Government for all expenses the Government incurred in the travel and transportation of claimant to her post. If, however, agency officials determined that early departure was necessary for official or personal reasons of significant interest to the Government, the official could waive reimbursement of expenses already incurred.

Claimant arrived at her post on April 27, 1997 and immediately inspected the house that the station housing board had assigned to her. Claimant stated that the house was horrible and that she would not spend the night there. The house was formerly used by an agency official. It was a traditional home in layout and of wood construction, needing some minor repairs with a kitchen that might be considered sub-standard. The chief of base (COB) immediately gave all new arrivals, including claimant, the opportunity to select their own housing from the existing housing pool. Claimant and her spouse found a house acceptable to their taste within the Government's housing allowance, but the house exceeded the square foot allowance -- fourteen hundred to fifteen hundred square feet. A square foot exemption was denied. Claimant and her spouse resided in temporary quarters until claimant could find a suitable house.

The COB showed claimant four houses, meeting the size regulations, that claimant rejected. The COB then offered to show claimant three or four more houses of the appropriate size. Claimant expressed doubt that she would find a house that was acceptable to her. The COB offered to show claimant a brand new house of appropriate size in another area that had a fitness center and a swimming pool. Claimant rejected that house, stating that she wanted to live on the economy, despite the fact that all married personnel with one exception lived in the area offered by the COB. Claimant, nevertheless, discussed this option with her spouse. On May 19, claimant met with the COB and advised him that she would not look at any more houses since she intended to leave her post on May 22.

On or about May 16, claimant presented a draft memorandum to the COB requesting early departure from station. By cable of May 19 to a colleague, claimant stated that the available housing was "pitiful" and that her problem with housing was the major reason for her unhappiness, but not the only reason.

By cable of May 19, the COB advised the chief of the agency's geographic area division that for a variety of serious personal and professional reasons claimant was requesting an early departure from her overseas station and requested assistance in redirecting claimant's household effects and air freight back to CONUS. The COB requested that claimant's early return be deemed at the convenience of the Government, in view of claimant's and claimant's spouse's completion of three successful overseas tours of duty.

In a second cable of that date, the COB related the efforts the agency had made in finding quarters for claimant and her spouse, the fact that western style housing was scarce at her duty station and that most married couples lived in a particular area of the duty station.

In a third cable of that date, the COB provided additional information on the efforts that the agency had made in securing acceptable housing for claimant and explained claimant's unhappiness with the venue of her assignment. The COB felt that claimant had inflated expectations concerning the quality of life at her new post. This cable mentioned a conversation between claimant and an agency colleague in which claimant mentioned that being turned down for her choice of house was the major reason for her short return, that her spouse was "fed up," that her spouse felt that it was too hot to play golf during the day, that there was nothing to do in the area of the duty station, that there was no social life there, and that the weather was bad.

On May 19, the COB requested that the chief of the geographic area division approve claimant's immediate return to headquarters and that the division sort out the personal and fiscal accountability issues involved with the aborted assignment.

By cable of May 20, the chief of the geographic area division approved the request for early departure, but not at the Government's convenience. On or about May 22, 1997, claimant left her post and returned to CONUS.

On May 29, the agency estimated its permanent change of station (PCS) costs for claimant's move to and from the overseas post to be $42,859, which was the total of $8268 for round-trip air fare for claimant and spouse; $5461 for shipment of claimant's private vehicle; $26,409 for export and shipment of household effects; $321 for air freight; and $2400 for return of the agency travel advance.

On June 5, 1997, the deputy chief of the geographic area division conferred with claimant about her early return from her post. Claimant described what she perceived as the vulnerability of the base, the inadequate housing, and the alleged cavalier attitude towards personnel. The deputy chief asked claimant why she had not brought her concerns to the attention of senior management before cutting short her tour and why she had based her reasons on poor housing and her husband's statement about golf. The deputy chief recorded claimant as saying those reasons were part of a cover to leave her post and that the COB would not allow her to state her real reasons via cable traffic or through the agency e-mail system.

By cable of June 2, 1997, the agency's geographic area chief requested the concurrence of the Director of Operations that claimant's early return be deemed to be one that was not for the convenience of the Government.

On June 3, in a memorandum for the record, claimant admitted that she had been aware of the payback provisions of the service agreement when she decided to return early from her overseas post, but that the agency had a concurrent responsibility to provide its employees decent housing, adequate cover, a secure working environment, and a management philosophy that valued personnel. In

claimant's opinion the agency's geographic area division "failed miserably" in fulfilling those responsibilities.

On June 7, 1997, claimant prepared another memorandum for the record describing the reasons for her early departure. She stated she left for a combination of serious personal and professional reasons -- cover, security, housing, and management attitudes toward its personnel. She stated that, based on a statement a colleague had made, management seemed unconcerned with the loss of personnel. Although the colleague later explained the context of the statement, claimant remained unconvinced that management had the correct attitude. She was also concerned about the lack of "cover." Although ostensibly assigned elsewhere, she found that everyone already knew she was with the CIA.

Claimant also mentioned her concerns with station security. Claimant stated that her workplace was surrounded by an eight foot high wall, but had no barbed wire and no American forces or American contractor-provided security. The workplace was located on the main street of the city and claimant considered the building to be "old and dilapidated."

Claimant met with the chief of the geographic area division on June 10, but the chief could not provide claimant with any assurance that he could justify a finding that claimant's return was for the convenience of the Government. By memorandum of June 7, claimant provided information to the chief that she maintained made her eligible for that determination. The information was merely a restatement of the concerns claimant had previously voiced.

On July 1, 1997, the chief of the geographic area division requested the concurrence of the Director of Human Resource Management in approval of claimant's early departure and the determination that the departure was not for the convenience of the Government. The director stated that claimant

> does not meet the criteria for short of tour at the convenience of the Government which include early departure for an onward assignment; closure of a station, base, or other facility; downsizing, which normally means a position is cut and the person is required to leave; documented performance problems requiring early departure; and other sensitive issues such as discipline, security or counterintelligence concerns, as well as employee or dependent safety.

On July 23, the agency's policy group and policy analysis team requested the Director of Human Resource Management to concur in claimant's short of tour departure, but also to determine that it was not for the convenience of the Government. The agency policy group also requested that the director find a breach of claimant's service agreement had occurred and that he approve the geographic area office's recommendation that claimant was responsible for the

$42,859 of travel expenses that the Government incurred in her aborted overseas assignment.

On August 6, 1997, the director determined that claimant's early leaving of her post was not for the convenience of the Government and that claimant had breached her service agreement and was responsible for the expenses incurred for travel, transportation of her spouse and her household effects to her duty station and return.

Claimant then sought the assistance of the agency Office of Inspector General (OIG), which advised claimant on September 4, 1997, that the matter would be handled by the agency's Directorate of Administration and that an appeal mechanism within that Directorate had been established to consider whether claimant had reasons satisfactory to the agency for the early departure from her station. Claimant also filed a complaint with the agency's Office of Equal Employment Opportunity.

In October 1997, cable traffic passed between the overseas station and agency headquarters indicating a need for security surveys of off-compound residences and possible hardening of security for residences that were outside the compound. The station expressed special concern about two houses outside the compound which had easily accessible entrances. The station made recommendations for the use of guards, which were implemented immediately, and recommendations for enhanced locks and alarms for the residences. In late October the agency surveyed three houses and recommended installation of locks, alarms and other structural improvements. The agency decided to install alarms in the five residences in December 1997 or January 1998, while pursuing funding for the structural improvements.

On November 5, 1997, claimant filed an appeal with the agency, alleging that the agency did not live up to its obligations in the areas of security, housing, cover and base management. Claimant argued that "the Service Abroad Agreement, which I admittedly breached, imposes equal obligations on the part of the agency." She stated that her previous overseas posts had better residential security than the post she had left early. She complained that the quality of the residential housing did not meet applicable regulations in that the housing was not "safe and secure" or "adequate" and was not "comparable" to what an employee would occupy in the Washington Metropolitan area.

On May 21, 1998, the agency's Deputy Director of Administration (DDA) sustained the agency's determination that claimant had breached her service agreement and that she was liable for all expenses incurred in relocating to and from claimant's overseas post. The DDA found that claimant's decision to leave after spending only one month at her duty station was hasty and unjustifiable and that claimant had not attempted to solve her issues with higher authority before deciding to leave. The DDA concluded that none of the issues raised justified early departure from the post. Before closing the matter, the DDA requested that the Deputy Director of Operations meet with claimant to discuss her allegations.

The DDA found that the security situation at the overseas post was not sufficiently threatening to justify the early departure. With regard to housing, the DDA found that claimant had not made a serious effort to address her concerns before she departed her post.

The DDA reaffirmed his determination in a memorandum dated July 20, 1998, and advised claimant that consistent with agency regulations, he was forwarding a copy of the memorandum to the Director of Finance and Logistics and directing him to address claimant's breach of that agreement as a debt due the agency.

After intercession by claimant's spouse and further meetings between claimant and senior agency officials, on September 28, the DDA reaffirmed his previous conclusions and advised claimant that the agency had established the debt, that there were standard procedures for the processing of debt cases, and that claimant could seek review of the decision by the Office of Finance and Logistics (OFL).

On October 8, 1998, the OIG, through its Office of General Counsel (OGC), issued an opinion that the agency could exercise the discretion to assume the costs of claimant's initial transfer from headquarters to her overseas post. The OIG suggested that the DDA review this aspect of the case and determine if it would be appropriate to assume the initial transportation costs to the post. By memorandum of November 13, 1998, the agency OGC disagreed with the OIG OGC's conclusion that the DDA possessed discretion to relieve claimant of liability for the outbound costs. The agency OGC advised that claimant's case be addressed by OFL without further delay.

On or about December 7, the DDA agreed with the agency OGC and forwarded the matter to the OFL. On January 9, 1999, the agency calculated a debt of $40,927.15 which included advances of $5533.54, and central agency travel payments of $12,555 (including inbound airfare of $4134 but not outbound fare which claimant paid herself), and outbound and inbound "factored cost" of $11,419 each.

On February 11, 1999, the OFL notified claimant of the existence of the debt of $40,927.15 and advised claimant that the debt would be considered delinquent if it were not liquidated by March 11, 1999. OFL also advised claimant that it would make payroll deductions of up to fifteen percent of claimant's disposable income from claimant's salary each pay period until the debt was liquidated.

On March 8, 1999, claimant wrote OFL requesting an oral hearing and suspension of the interest on her debt and suspension of salary deductions until "her case had been concluded." Claimant stated her understanding that the OIG had advised that the DDA had the discretion to reduce the debt. She also considered the debt excessive and questioned whether she could be charged for

round trip tickets when she spent seven thousand dollars for her family's return ticket home.

On March 17, OFL granted claimant an oral hearing and placed the debt on hold pending completion of the hearing. On August 19, 1999, OFL conducted an oral hearing on this matter. On September 13, 1999, the hearing official made findings on the matter, noting that claimant stated at the hearing that she did not experience or witness any event that clearly demonstrated that claimant or her spouse were in imminent personal danger.

On November 19, 1999, OFL rendered its decision. OFL determined that claimant was liable for all PCS costs associated with the breach of the service agreement. OFL found no extenuating circumstances sufficient to support the decision to breach the service agreement. OFL found that claimant did not pursue any available avenues for relief -- referral to the OIG, agency privacy channel, message to the chief of the geographic area division or conferring with the COB -- concerning base management issues before making the decision to leave her post.

Discussion

When a Government employee travels to and from a post outside CONUS, the expenses of travel and transportation to and from the post shall be allowed to the same extent and with the same limitations prescribed for new appointees under 5 U.S.C. § 5722. 5 U.S.C. § 5724(d) (1994).

Section 5722 of Title 5 of the United States Code provides that an agency may pay travel and transportation expenses of a new appointee only if the new appointee agrees in writing to remain in Government for specified minimum periods. If the new appointee violates the agreement, the money spent by the United States for expenses is recoverable as a debt due the Government. 5 U.S.C. § 5722 (b). If an appointee does not spend the required time in service, an agency may pay the expenses only if the new appointee is separated for reasons beyond the appointee's control which are acceptable to the agency concerned. 5 U.S.C. § 5722(c). Thus, as applied to overseas permanent change of station travel, an agency may pay travel and transportation expenses for an employee who fails to stay at his/her post for the minimum time in the service agreement only when the employee leaves for reasons beyond the control of the employee and the reasons are acceptable to the agency.

Acting under the authority of the Central Intelligence Agency Act of 1949, 50 U.S.C. § 403e, the agency has published regulations for control of travel and transportation expenditures of its employees. The agency regulation entitled Employee Tours of Duty Abroad (ETDA)[2] provides that if an employee terminates

[2] The agency's IRO has authorized release of cited portions of the regulation, but has requested that the regulation number not be publicly released. IRO has

a permanent assignment outside the United States prior to completing twelve months of creditable service, following the date of arrival abroad, the employee must reimburse the Government for all expenses incurred in the travel and transportation of the employee, dependents, and household and personal effects to the post, and that the employee is not entitled to payment of those expenses incurred in returning from the Post. ETDA, Breach of Service Abroad Agreement. The regulation also provides that the agency may waive these provisions if it determines that early departure is necessary for official reasons or for personal reasons of "significant interest" to the Government. Id.

Here, claimant signed a service abroad agreement in which she agreed to spend at least twenty-four months at her post; she served in her post for about one month. Claimant argues that she is entitled to release from the conditions of her service abroad agreement, a request that the agency has refused. The determination whether or not to release an employee from her service abroad agreement is a matter of agency discretion; the determination will not be overturned by the Board unless there is no reasonable basis for it; i.e., that the agency determination was arbitrary and capricious. Deborah C. Brooks, B-255496 (Apr. 20, 1994); John P. Maille, 71 Comp. Gen. 199 (1992); See also Dyna Duncan, GSBCA 15490-RELO (June 8, 2001) (employee's cost of transfer from overseas station to station in CONUS was at employee's expense when the transfer took place before expiration of twelve months of minimum service as specified in employee's transportation agreement).

Here, the agency's determination that claimant should not be released from the terms of her service agreement is clearly based in reason. At the time claimant left her post, claimant's stated principal reason was the alleged lack of suitable housing at or near the station. When claimant rejected the first residence the agency had chosen for her, the agency located many residences for claimant's consideration, and one brand new residence, located in a prime location. It is evident from the record that claimant did not give serious consideration to the alternative housing the agency presented to claimant; she inexplicably and summarily rejected the agency's offer of a new house in a prime location.

When claimant left her post, she vaguely expressed broader concerns to the COB, which, upon her return to CONUS, she later expanded on to the agency's senior management. These concerns related to cover, a secure working environment, and management philosophy that valued personnel. The agency did not abuse its discretion in determining that those concerns did not justify a finding that claimant's early transfer from her post would be acceptable to the Government -- that is, in the phraseology of the ETDA, "of significant interest" to the Government. She did not, for example, demonstrate to the agency that there was an immediate threat to her health or safety that would have justified her early transfer from her post.

---

approved release of the regulation's title, which we use as the citation.

It is true that, between October and December 1997, the agency moved to improve residential security at claimant's overseas post. An employee's identification of possible areas of improvement in the workplace environment does not necessarily justify an employee depriving the agency of the employee's skills and talent at the post and does not render arbitrary a Government determination that the employee's leaving would not be acceptable or would not significantly advance the Government's interests.

The agency's determination was fully in accord with statute and implementing agency regulation; claimant has shown no basis for overturning the agency decision. The Board denies the claim.

_____
ANTHONY S. BORWICK
Board Judge