

Board of Contract Appeals
General Services Administration
Washington, D.C. 20405

May 30, 2003

GSBCA 15953-RELO

In the Matter of DARON L. BROWDER

Daron L. Browder, Conyers, GA, Claimant.

Cynthia C. Cummings, Senior Associate Counsel, Defense Finance and Accounting Service, Columbus, OH, appearing for Department of Defense.

HYATT, Board Judge.

An employee who returns to the United States after serving a full tour overseas, but who leaves federal service without completing a full year of service, must reimburse the Government for relocation expenses received.

Background

The Defense Finance and Accounting Service (DFAS) has forwarded for our review the claim of Daron L. Browder, a former employee of the Defense Commissary Agency (DeCA), who challenges the determination that he must return relocation expenses paid by his employing agency in connection with his transfer from the Waegwan Commissary in Korea to the Fort Gillem Commissary in Georgia.

Mr. Browder's travel orders were issued on September 10, 1999, originally to be effective September 13, 1999. In addition to transportation expenses for claimant and his dependents, the orders authorized payment of temporary quarters subsistence expenses (TQSE) for sixty days, miscellaneous expenses, and shipment of household goods. The orders stated that the required period of service overseas had been completed and that a transportation agreement had been signed. The orders were subsequently amended twice, principally to establish a reporting date of October 10, 1999 and to add fund cites for the authorized relocation benefits.

Mr. Browder reported to his new duty station on October 10, 1999. Later that month he requested advance TQSE from DFAS¹, which was provided in the amount of \$3510, and reimbursement for en route and miscellaneous expenses, which was also paid in the amount of \$483.03. He failed, however, to file a travel claim against which DFAS could liquidate the advance, nor did he refund the advance.

Mr. Browder subsequently resigned from Federal service in January 2000. DFAS determined that his employing agency, DeCA, should recoup the relocation expenses paid because claimant did not complete a year of federal service upon his return to Georgia. DFAS took action to collect claimant's unliquidated travel advance. A letter dated May 18, 2000 informed Mr. Browder that he was indebted to the United States Government in the amount of \$4,203.20, which included amounts advanced for TQSE, and payments of miscellaneous expenses and withholding tax allowance in the year when the payments were made. The letter advised that Mr. Browder should respond to DFAS within fifteen days of its receipt and further informed him that, if he disagreed with DFAS's assessment, he could seek redress at the Board. Mr. Browder did not respond to the May 18 letter within fifteen days, but in December 2000 wrote a letter seeking to have the matter reopened. In that letter he stated that he did not recall signing a transportation agreement and asserted his belief that the Government was required to return him to Atlanta. In a letter dated May 24, 2001, DFAS again advised Mr. Browder that it considered the debt to be valid and reminded him that he could seek review of the claim at the Board. On June 12, 2002, DFAS received a letter from claimant dated July 20, 2001 asking that the agency forward his claim for review by the Board. DFAS subsequently decided to comply with this request.

In preparing its submission to the Board, forwarding Mr. Browder's claim for review, DFAS determined that although the travel orders show that a transportation agreement was signed, DeCA has no copy of that document available to forward with the claim. DFAS explains that presumably the agreement would have been placed in claimant's official personnel folder. When Mr. Browder left Government service, his official personnel folder was forwarded to the General Services Administration's National Personnel Records Center. Prior to forwarding that folder, DeCA would have been required to remove temporary records from the folder. DFAS has consulted the custodian of claimant's personnel folder and has been informed that there is no copy of any transportation agreements. DFAS assumes that these agreements are considered temporary records and were thus removed from the official personnel folder.

Discussion

Mr. Browder contests the agency's decision to seek repayment of his relocation benefits based on his failure to remain in Government service for one year. He argues that he does not recall signing a transportation agreement and does not believe he did so. He further contends that if he did not sign the agreement then he did not breach an obligation to remain in Government service for one year upon his return to Atlanta. He also maintains that the agency was required to return him to the United States and thus he is entitled to all the benefits he received.

¹ DFAS processes travel claims of DeCA employees.

Neither of these arguments is persuasive. Mr. Browder is correct that upon his satisfactory completion of his tour outside the continental United States (OCONUS) the agency was required to return him to the Atlanta area. 5 U.S.C. § 5722 (a)(2), 5724(d) (2000); see Richard M. Boyer, B-217,159 (June 28, 1985). The agency in fact paid travel and transportation costs and the expenses of shipping household goods incurred with respect to the return of Mr. Browder and his family to Atlanta and did not, in its communications with Mr. Browder, assert that these amounts must be repaid. The issue here, then, focuses solely on recoupment of the relocation costs associated with his return as an employee of DeCA.

The statutory provisions authorizing payment of travel, transportation and relocation benefits to employees who transfer from one official station to another are implemented in the Federal Travel Regulation (FTR) and, for civilian employees of the Department of Defense, explained and supplemented in volume two of the Joint Travel Regulations (JTR). With respect to claimant's situation, the JTR provide that with respect to an overseas position, the completion of the period of service specified in the transportation agreement establishes eligibility for travel benefits. JTR C4001. Prior to authorization of other expenses and allowances, however, such as relocation costs, the JTR requires that the returning employee enter into a transportation agreement with the obligation to remain in Government service for twelve months. If an employee leaves government service prior to the completion of one year of service, for reasons that are not acceptable to the agency, the agreement has been breached, the entitlement to relocation allowances is extinguished, and the employee must repay amounts received to the government. JTR C4012-A, C4103.

In Boyer, General Accounting Office (GAO) held that an employee who entered into a one-year transportation agreement upon returning to the United States from an OCONUS location, and who breached his agreement by becoming separated from government service prior to completion of the required service for reasons not satisfactory to the agency, was required to refund to the agency relocation allowances that had been approved and paid. Similarly, in Thelma B. Van Horn, B-205,892 (July 13, 1982), an overseas Army employee who was transferred back to the United States, but who failed to enter into a transportation agreement, and who also failed to complete one year of service with the government, was found to be obligated to repay the relocation allowances she had received in connection with the transfer. GAO reasoned that in the absence of a transportation agreement, the agency had no authority to pay relocation allowances.

In this case, we need not, then, determine whether claimant entered into a transportation agreement or not. The result is the same regardless. If Mr. Browder entered into a transportation agreement, he would be bound by its terms. E.g., Jeffrey P. Cardinal, B-206,219 (June 28, 1985). He would then have breached the agreement by leaving the government's employ prior to completing twelve months of service and lost his entitlement to relocation benefits. Alternatively, if he did not enter into a transportation agreement at all, as explained in Van Horn, the agency was not authorized to pay his relocation benefits. In either event, under the reasoning of the precedents discussed above, he has forfeited his entitlement to TQSE, miscellaneous expenses and other permanent change of station benefits.

The claim is denied.

CATHERINE B. HYATT
Board Judge