

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

April 18, 2006

GSBCA 16806-RELO

In the Matter of KERRY FLOOD

Kerry Flood, Miami, AZ, Claimant.

Vickie Smith, PCS Supervisor, Bureau of Land Management, Denver, CO, appearing for Department of the Interior.

PARKER, Board Judge.

Background

In connection with his voluntary transfer from Price, Utah, to Ely, Nevada, in January 2005, Kerry Flood signed an employment agreement. In that document, Mr. Flood promised his employer, the Department of the Interior's Bureau of Land Management (BLM), that he would remain in government service for a period of twelve months following the transfer, with the understanding that the cost of relocation travel, transportation, and other allowable expenses would be paid by the Government. Mr. Flood also agreed to repay the Government for those costs if he left government employment within twelve months, unless the separation was for reasons beyond his control and acceptable to BLM.

Mr. Flood was never happy with his position in Ely. He and his supervisors apparently did not see eye-to-eye on various work-related issues, including the issue of what work Mr. Flood would be assigned to perform. In addition, Mr. Flood claims that he was led to believe that he would be in line for a job in Reno, Nevada, when the incumbent retired, and that he might receive a promotion if he agreed to stay in Ely. Neither the hoped-for

position in Reno nor the promotion ever materialized. All of these things, Mr. Flood explains, put him under tremendous stress.

Mr. Flood resigned from government service on August 3, 2005. When he received a bill from BLM asking him to repay the \$19,602.49 in travel, transportation, and other costs incurred by the agency, Mr. Flood asked BLM to waive repayment of the debt. The agency declined to do so, and Mr. Flood has asked the Board to review BLM's decision as to the debt's validity.

Discussion

Under 5 U.S.C. § 5724(i) (2000), an agency may pay relocation allowances when an employee is transferred within the continental United States only after the employee agrees in writing to remain in government service for twelve months after his transfer, unless separated for reasons beyond his control that are acceptable to the agency concerned. If the employee violates the agreement, the money spent by the Government for the allowances is recoverable from the employee as a debt due the Government. *Nancy C. Johnson*, GSBCA 16612-RELO, 05-1 BCA ¶ 32,931. The Federal Travel Regulation, which implements the statute, is to the same effect:

Will I be penalized for violation of my service agreement?

Yes, if you violate a service agreement (other than for reasons beyond your control and which must be acceptable to the agency), you will have incurred a debt due to the Government and you must reimburse all costs that your agency has paid towards your relocation expenses.

41 CFR 302-2.14 (2004).

We have held that unless an employee can show that his resignation was effectively forced by the agency without reasonable grounds, the resignation will be presumed to have been voluntary, and if it occurs within twelve months of a transfer, the agency may recover as a debt the expenses it paid for the employee's relocation. *Debora J. Green*, GSBCA 16505-RELO, 05-1 BCA ¶ 32,911; *Amy Oestreich*, GSBCA 16489-RELO, 05-1 BCA ¶ 32,852 (2004). We agree with BLM that Mr. Flood has failed to show that he was effectively forced to resign. Certainly, the job in Ely was far from ideal for Mr. Flood, and we acknowledge that his frustration with the work and his inability to arrange for either a transfer or promotion may have led to stress. We do not agree, however, that these conditions were so severe as to constitute an effective firing. BLM carefully considered Mr. Flood's explanation for resigning and his argument that, given the problems he experienced in connection with his employment in Ely, the resignation amounted to a

separation beyond his control. The agency determined that “although we empathize with Mr. Flood’s personal and family health issues, the BLM does not consider these health issues as presented in his waiver request to be ‘reasons beyond his control that are acceptable to the agency’ for separation.” We hold that the agency’s determination in this regard was reasonable and that the debt is therefore valid.

ROBERT W. PARKER
Board Judge