

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

July 20, 2006

GSBCA 16921-RELO

In the Matter of DALE W. SHEPHERD

W. Craig James of Mauk & Burgoyne, Boise, ID, appearing for Claimant.

Toby D. McCoy and James E. Hicks, Administrative Law Section, Office of Chief Counsel, Drug Enforcement Administration, Department of Justice, Alexandria, VA, appearing for Department of Justice.

DeGRAFF, Board Judge.

When a federal government employee signs a service agreement in connection with a transfer and does not remain in government service for the length of time specified in the agreement, the money spent by the Government in connection with the transfer is recoverable as a debt due the Government unless the employee is separated from the service for reasons beyond the employee's control which are acceptable to the agency.

Background

In 2004, the Drug Enforcement Administration (DEA) told Dale W. Shepherd it was going to transfer him from one duty station to another. In mid-May 2004, Mr. Shepherd signed a service agreement which said he would remain in government service for twelve months following his transfer. The agreement said if he did not remain in government service for twelve months, he would repay DEA the total of the costs it incurred in connection with his relocation, unless he separated from government service for reasons beyond his control and acceptable to DEA.

The day after he signed the service agreement, Mr. Shepherd told DEA he would report for duty at his new duty station, although he intended to retire from the agency on January 3, 2005. He asked DEA if it would hold his transfer “in abeyance” until he retired. DEA decided not to delay Mr. Shepherd’s transfer, and he reported for duty at his new duty station in August 2004.

Mr. Shepherd voluntarily retired on January 3, 2005. In March 2006, DEA told Mr. Shepherd he had not fulfilled the terms of his service agreement and would have to repay the costs the agency incurred in connection with his relocation. Mr. Shepherd asks us to review the agency’s decision.

Discussion

When a government employee transfers from one duty station to another, the Government pays many of the employee’s relocation expenses. 5 U.S.C. §§ 5724, 5724a (2000). The Government may pay such expenses, however, only after the employee agrees in writing to remain in government service for twelve months following the effective date of the transfer, unless the employee is separated from service for reasons beyond the employee’s control which are acceptable to the agency. If the employee violates the agreement, the money spent by the agency is recoverable as a debt due the Government. 5 U.S.C. § 5724(i); 41 CFR 302-2.14 (2004).

Mr. Shepherd says DEA has the discretion to decide whether he owes a debt to the agency. We agree. According to the statute and the regulations which implement the statute, Mr. Shepherd owes no debt if DEA determines he separated from government service for reasons beyond his control and if his reasons were acceptable to DEA. Although Mr. Shepherd presented DEA with two arguments in support of the proposition that it should decide he does not owe a debt, DEA found no reason beyond his control and acceptable to the agency for his leaving government service within twelve months after his transfer. Below, we consider whether DEA properly exercised its discretion when it rejected Mr. Shepherd’s arguments and decided he owes a debt to the agency.

Mr. Shepherd’s first argument is that by transferring him even though he asked for his transfer to be delayed, DEA acknowledged he would not be staying in federal service for twelve months following his transfer, and condoned his leaving before the twelve months expired. Put another way, says Mr. Shepherd, the agency accepted that his retirement before the twelve months passed was a reason beyond his control and acceptable to DEA. Mr. Shepherd also says he incurred reimbursable relocation costs in reliance upon the agency’s acceptance of his plan to retire within twelve months of his transfer.

Mr. Shepherd is putting more weight on the facts than they can bear. When DEA rejected his request to stay at his old duty station, he had previously said he intended to retire from DEA in January 2005, and he had also signed a service agreement which said he would repay his relocation costs if he left government service before completing twelve months of service after his transfer. Nothing in DEA's rejection of his request to stay at his old duty station suggests that DEA expected him to violate his service agreement or accepted that his retirement would be beyond his control and an acceptable reason for leaving government service before twelve months had passed. No matter what Mr. Shepherd's intentions were before he transferred, he could have decided to stay in government service for twelve months, whether with DEA or with another agency, instead of retiring five months after his transfer. His announced intention to retire did not vitiate the signed service agreement, and DEA's rejection of Mr. Shepherd's first argument was a reasonable exercise of its discretion.

Mr. Shepherd's second argument is that an agency employee told him DEA never collected costs from employees who failed to stay in government service for twelve months after their transfers, and he believes DEA is only attempting to collect a debt from him as part of a recent internal agency review of relocation costs paid to employees who left government service within one year after their transfers. Mr. Shepherd says if DEA intended to change its enforcement policy, it needed to provide notice of its intention before he transferred.¹

DEA says its policy is consistent with the statute and the regulations, and requires employees to repay relocation costs if they violate their service agreements. DEA also says its collection effort in Mr. Shepherd's case is not the result of a change in DEA policy or some sort of retroactive application of a policy. Mr. Shepherd has not provided us with any evidence to show the agency's earlier policy was not to collect debts from employees who failed to stay in government service for twelve months after their transfers. He has, however, asked us to wait to resolve his claim until DEA responds to a Freedom of Information Act (FOIA) request by providing him with information which he believes will show whether DEA's practice was to collect costs from such employees. There is no reason for us to delay our decision in this matter, because even if Mr. Shepherd is the only employee the agency ever asked to repay relocation costs as the result of leaving government service within twelve months after a transfer, this does not establish DEA abused its discretion when it decided Mr. Shepherd's reason for leaving was within his control and not acceptable to the agency. What is before us for review is DEA's exercise of discretion in Mr. Shepherd's case. The

¹ Mr. Shepherd also says DEA's failure to provide him with advance notice of its change in policy was a violation of his constitutional rights. Our authority does not extend to resolving constitutional issues.

manner in which DEA dealt with other employees and the issue of whether it dealt with other employees properly is not within the scope of this review.

Mr. Shepherd signed a service agreement and did not remain in government service for twelve months following his transfer. Instead, he voluntarily retired. DEA decided his voluntary retirement was within his control and was not an acceptable reason for leaving before he completed twelve months of service. Mr. Shepherd has not shown that DEA's decision was an abuse of its discretion. Therefore, according to the terms of the statute and the regulation, he owes the Government a debt for the amount DEA spent in connection with his relocation.

If any action is to be taken to eliminate or to decrease the amount of Mr. Shepherd's debt, it can be taken in accordance with DEA's procedures regarding federal claims collection and waiver. DEA can consider the evidence Mr. Shepherd receives in response to his FOIA request, determine whether he is being treated differently from other people who are similarly situated, and take into account whatever equities weigh in his favor.

Decision

The claim is denied.

MARTHA H. DeGRAFF
Board Judge