

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

August 19, 2004

GSBCA 16332-TRAV

In the Matter of OSCAR G. RIVERA

Oscar G. Rivera, Mayaguez, PR, Claimant.

Juan M. Ortiz, State Executive Director, Farm Service Agency, San Juan, PR,
appearing for Department of Agriculture.

HYATT, Board Judge.

Employees who are recruited from permanent positions in the continental United States to work in Puerto Rico are entitled to renewal agreement travel benefits upon completion of the agreed-upon tour of duty if they will be continuing to work for the agency in Puerto Rico and are willing to enter into a second service agreement.

Background

In October 2000, Oscar G. Rivera, an employee of the United States Department of Agriculture (USDA), Farm Service Agency, relocated from Alice, Texas, to Puerto Rico to accept a promotion as District Director. He signed a two-year service agreement when he relocated. In September 2003, he requested authorization for home leave and renewal agreement travel and offered to enter into a new service agreement.

The USDA declined to authorize the travel. Its reasoning was that the position of District Director with the Farm Service Agency is not a temporary assignment, but a permanent one for which he was selected and that Puerto Rico is not considered an "overseas" area.

After USDA denied his request for home leave and renewal agreement travel authorization, Mr. Rivera asked the Board to review his claim. He argues that the Federal Travel Regulation (FTR) supports his position and that, having completed his first tour of duty, he should be considered eligible for home leave and renewal agreement travel.

In response to Mr. Rivera's claim, the USDA tells us that Mr. Rivera lived in Puerto Rico in 1982, when he was hired by the Farmers Home Administration for a position in Texas. He was selected for the position of District Director in Puerto Rico under a merit promotion announcement. He signed two service agreements in August 2000 to receive relocation travel expenses and a relocation bonus. USDA denied Mr. Rivera's request for tour renewal agreement travel and home leave because it regards his position in Puerto Rico as permanent and believes that Puerto Rico is not an overseas duty location.

Discussion

Federal civilian employees who are transferred to posts of duty outside the continental United States are generally eligible for a benefit commonly referred to as renewal agreement travel when they complete a set term of service and agree to continue to work at the overseas post. E.g., Robert Gamble, GSBCA 16021-TRAV, 03-2 BCA ¶ 32,357; James A. Wolfe, GSBCA 14545-TRAV, 99-1 BCA ¶ 30,165 (1998). The governing statute, 5 U.S.C. 5728(a) (2000), authorizes tour renewal agreement travel as follows:

[A]n agency shall pay from its appropriations the expenses of round-trip travel of an employee, and the transportation of his immediate family, but not household goods, from his post of duty outside the continental United States, Alaska, and Hawaii to the place of his actual residence at the time of appointment or transfer to the post of duty, after he has satisfactorily completed an agreed period of service outside the continental United States, Alaska, and Hawaii and is returning to his actual place of residence to take leave before serving another tour of duty at the same or another post of duty outside the continental United States, Alaska, and Hawaii under a new written agreement made before departing from the post of duty.

The regulations implementing this statutory provision are contained in the FTR at 41 CFR 302-1.4 and 302-1.13 (2000). As the USDA points out, the FTR uses the term "overseas," but does not define it. What is clear, however, is that although the Commonwealth of Puerto Rico may be considered to be part of the United States for some purposes, it is not part of the continental United States (CONUS), which is limited to the forty-eight contiguous states and the District of Columbia. 41 CFR 302-1.4 (a), (b). The USDA is also correct in its statement that the FTR does not define the term "overseas."

In pertinent part, the FTR provision addressing overseas tour renewal agreement travel states:

Employees may be eligible to receive allowances for travel and transportation expenses for the purpose of returning home to take leave between tours of duty overseas as provided in this section. These provisions are applicable to employees serving tours of duty at posts of duty outside the United States. These provisions are also applicable to employees serving tours of duty in Alaska and Hawaii [under specified conditions].

(a) *Eligibility.* Employees may be eligible to receive allowances for travel and transportation expenses for returning home between tours of duty overseas under the criteria set forth [below].

(1) *Eligibility requirements for all areas outside the continental United States.* In order to be eligible for allowances under this section, an employee before departure from his/her post of duty outside the continental United States must have:

(i) Satisfactorily completed an agreed period of service or the prescribed tour of duty as provided in § 302-1.5(b) for return travel entitlement;

(ii) Entered into a new written agreement as provided in § 302-1.5(b) for another period of service at the same or another post of duty outside the continental United States. The agreement shall cover costs incident to the travel to the employee's actual place of residence or alternate location and return

41 CFR 302-1.13. Section 302-1.5 of the FTR covers service agreements and, in pertinent part, provides as follows:

(b) *Transfers, appointments, and separations involving posts of duty outside the continental United States.* (1) In connection with the transfer or appointment of employees to posts of duty outside the continental United States, or between posts located in (i) separate countries, (ii) separate areas of the United States located outside the continental United States (e.g., Alaska, Hawaii, the Commonwealth of Puerto Rico), or (iii) any combination of these areas, the expenses of travel, transportation, moving and/or storage of household goods, and other applicable allowances as provided in this chapter shall not be allowed unless and until the employee selected for such transfer or appointment agrees in writing to remain in the service of the Government for a period of 12 months following the effective date of the transfer

Id., 302-1.5. This section of the FTR further provides that the employee who is transferred outside the continental United States is generally entitled to the expenses of return travel, transportation, and moving expenses upon separation from service at that post of duty.

To summarize, statute authorizes tour renewal agreement travel for employees stationed outside the continental United States, upon completion of an agreed term of service under one agreement and prior to entering into another. The FTR defines continental United States to include the forty-eight contiguous states and the District of Columbia; the Commonwealth of Puerto Rico is not part of that definition. Thus, under the plain language

of 5 U.S.C. § 5728(a), claimant would appear to be eligible for this benefit. This is so despite the FTR's provision on renewal agreement travel that initially refers to posts of duty outside the United States. That provision then goes on to clarify that this means posts of duty outside the continental United States for purposes of eligibility for this benefit. Reading the statute and the regulation in a consistent fashion, we conclude that employees transferring from positions in the coterminous United States to Puerto Rico are eligible for renewal agreement travel.

This conclusion is supported, as claimant points out, by a very similar decision issued some time ago by the Comptroller General, the Board's predecessor in settling claims involving relocation of federal civilian employees. Estelle C. Maldonado, 62 Comp. Gen. 545 (1983). In Maldonado, another USDA employee had transferred from the coterminous United States to Puerto Rico. There, too, the agency argued that the employee, Ms. Maldonado, was posted permanently in Puerto Rico, as opposed to performing a "rotational" assignment, and thus was not, in the agency's view, eligible for tour renewal travel. Indeed, like Mr. Rivera, she was not offered the opportunity to enter into a written service agreement beyond the initial agreement relating to acceptance of relocation benefits. The Comptroller General disagreed with the agency's analysis:

An employee who is transferred from her place of actual residence in the conterminous United States for assignment in Puerto Rico, and who meets all of the eligibility requirements under 5 U.S.C. § 5728 is entitled to renewal agreement travel. In holding that an agency cannot defeat an employee's travel entitlement under section 5728 by refusing to negotiate a renewal agreement where the particular position could be filled locally, we have recognized that renewal agreement travel is not merely a matter of privilege. As stated in 5 U.S.C. § 5728, ". . . an agency shall pay . . . the expenses of round-trip travel . . ." when the conditions of entitlement are satisfied. The term "shall pay" is mandatory rather than discretionary.

Id. at 551. In short, employees who meet the statutory requirements are entitled to renewal agreement travel. The controlling factor is not whether the position outside the continental United States is temporary or permanent, but rather, whether the employee has satisfactorily completed the term of service agreed to and is ready and willing to enter into another term of service at that or another location outside the continental United States.

Puerto Rico comes within the umbrella of an "overseas" post of duty for this purpose because it is outside the coterminous forty-eight states and the District of Columbia. USDA essentially continues to rely on the position that was categorically rejected by the Comptroller General in Maldonado. Neither the statute nor the applicable regulations have significantly changed with respect to this issue since that decision was issued, and we deem its reasoning and analysis to be sound insofar as it addresses tour renewal agreement travel eligibility for employees transferred from positions within the continental United States to Puerto Rico. Mr. Rivera has completed the service period initially required and is willing to enter into another service agreement. USDA cannot defeat his entitlement to this benefit by stating that

the position is "permanent" and refusing to negotiate a service agreement. Mr. Rivera is entitled to tour renewal benefits.

Claimant has also raised an issue pertaining to the accrual of home leave. This issue is not one that we have the authority to resolve. The settlement authority previously exercised by the Comptroller General for claims involving compensation and leave of federal civilian employees is now vested by statute in the Director of the Office of Personnel Management (OPM). General Accounting Office Act of 1996, Pub. L. No. 104-316, § 202(n), 110 Stat. 3826, 3843 (1996), amending 31 U.S.C. § 3702. Accordingly, we cannot resolve this portion of Mr. Rivera's claim. He must raise this issue with the appropriate office of OPM.

CATHERINE B. HYATT
Board Judge