



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

July 2, 2008

CBCA 1135-RELO

In the Matter of PAULA A. SHIMATA

Paula A. Shimata, Aiea, HI, Claimant.

Wendy Wiedenfeld, Office of Legal Counsel, United States Army Corps of Engineers, Europe District, Department of the Army, APO Area Europe, appearing for Department of the Army.

DeGRAFF, Board Judge.

In 2006, the Department of Defense (DoD) transferred one of its employees, Paula A. Shimata, from Hawaii to Germany. In connection with the transfer, Ms. Shimata signed a transportation agreement which established the terms of her eligibility for reimbursement of travel and transportation expenses. According to the agreement, Ms. Shimata agreed to remain in government service for at least twelve months after she transferred to Germany. If she did not remain in service for the required twelve months, she would be required to repay DoD for her travel and transportation expenses unless she left early for reasons beyond her control which were acceptable to DoD. The agreement also provided she would be eligible for travel and transportation allowances in connection with her return to Hawaii if she completed thirty-six months of duty in Germany or if she curtailed her tour of duty for reasons beyond her control which were acceptable to DoD. In July 2006, Ms. Shimata began her tour of duty in Germany.

In mid-November 2007, Ms. Shimata asked her supervisor to end her tour of duty at the end of 2007, so she could return to Hawaii and provide her mother with assistance and emotional support. Ms. Shimata explained that her mother was under a great deal of stress and wanted Ms. Shimata to return to Hawaii to help care for Ms. Shimata's father and grandmother. Ms. Shimata said her father had a medical condition which had worsened

while she had been in Germany, and which was exacerbated by high blood pressure. She also said her grandmother's health had begun to decline within the previous four or five months. Ms. Shimata explained that her mother had previously been assisted in caring for her grandmother by Ms. Shimata's uncle, who had a medical condition which had worsened to such an extent that he was no longer able to continue to assist her mother. In support of her request, Ms. Shimata provided a doctor's note which simply said her father was taking blood pressure medication and another note which contained only four words regarding the nature of her uncle's medical condition. In addition, she provided a statement from her grandmother's doctor which said it would be helpful if Ms. Shimata were to return to assist her mother in providing care for her grandmother.

Ms. Shimata's supervisor told Ms. Shimata that the information she provided did not adequately support a conclusion that her family situation required her to return permanently to Hawaii at the end of the 2007. He told her it would be helpful if she could provide statements from doctors regarding the need for her to return to Hawaii at that time. Also, because Ms. Shimata filled a key position in the office, he asked her to request a later release date. Finally, he suggested she visit Hawaii in order to assess for herself the situation there. In late November 2007, in response to her supervisor's advice, Ms. Shimata asked to be released from her tour of duty on February 2, 2008. She did not visit Hawaii and did not provide any additional documentation from doctors regarding the need for her to return to Hawaii.

In late November 2007, DoD approved Ms. Shimata's request to leave Germany before she completed her thirty-six month tour of duty, but told her it would not pay travel and transportation allowances in connection with her return to Hawaii. Ms. Shimata asked DoD to reconsider its decision and, in response, the District Commander of the United States Army Corps of Engineers, Europe District, examined all of the information provided by Ms. Shimata. The District Commander explained to Ms. Shimata that DoD did not find her concerns about her family to be an acceptable reason for curtailing her tour such as would make her eligible for return travel and transportation allowances. The District Commander did not believe Ms. Shimata had provided sufficient documentation to show her mother, father, grandmother, or uncle suffered from a serious medical condition such as would make it necessary for her to return permanently to Hawaii before completing her tour of duty in Germany. Consequently, the District Commander concluded the reason Ms. Shimata offered for wanting to leave Germany before completing her tour of duty was not acceptable to DoD.

Ms. Shimata returned to Hawaii in late January 2008, at her own expense. She claimed to have incurred \$230.70 for shipping household items via the postal service, \$6675.51 for shipping her household goods from Germany to Hawaii, \$4602.03 for the amount she estimates she lost when she sold her car, \$2945 for shipping her stored household

goods to Hawaii, \$781.44 for renting a car in Germany, \$971.67 for air fare, and \$1355.51 for the cost of replacing items she sold or gave away when she left Germany. DoD denied her request for reimbursement of these expenses and she asks us to review DoD's decision.

Discussion

We deny Ms. Shimata's request to be reimbursed for the amount she estimates she lost when she sold her car and for the cost of replacing items she sold or gave away when she left Germany, because there is no authority in any statute or regulation for reimbursing such losses. *See Byron P. Franz*, CBCA 644-RELO, 07-1 BCA ¶ 33,550. We also deny her request to be reimbursed for the amount she paid to rent a car in Germany because Ms. Shimata was not performing official travel when she rented the car and DoD neither determined her use of a rental car was advantageous to the Government nor specifically authorized its use. 41 CFR 301-10.450 (2006).

Ms. Shimata's request to be reimbursed for the amounts she paid to ship her household goods to Hawaii and for her air fare are governed by a federal statute which says when the Government transfers a civilian employee to a post of duty outside the continental United States, the Government will pay travel and transportation expenses upon the employee's return. 5 U.S.C. § 5724(d) (2000). The Government may pay such expenses, however, only after the employee serves a minimum agreed upon period of not less than one and not more than three years, unless the employee leaves sooner for reasons beyond his or her control which are acceptable to the agency. 5 U.S.C. § 5722(c).

DoD implemented these statutory provisions in the Joint Travel Regulations (JTR), and the JTR which apply to Ms. Shimata's claim are those which were in effect in July 2006, when she reported for duty in Germany. 41 CFR 302-2.3. According to these regulations, if an employee completes one year of an assignment outside the continental United States and fails to serve the remainder of the agreed upon period for reasons which are not acceptable to the agency, the employee is responsible for the cost of transporting his or her household goods back to the United States, is not authorized to ship a vehicle back to the United States, and may not be provided with Government-funded commercial transportation. JTR C5580-B.

It is within an agency's discretion to determine whether a separation from service which appears to be voluntary was for a reason beyond the employee's control and acceptable as a reason for not fulfilling the terms of a service agreement. We will not question the agency's exercise of its discretion so long as it has a reasonable basis. *Melinda K. Kitchens*, GSBCA 16639-RELO, 05-2 BCA ¶ 33,062; 46 Comp. Gen. 724 (1967); Comp. Gen. Dec. B-174823 (Jan. 26, 1972).

DoD had a reasonable basis for concluding that Ms. Shimata's reason for leaving Germany before she fulfilled the terms of her service agreement was not an acceptable reason such as would entitle her to be reimbursed for the expenses of returning to the United States. DoD did not express any doubt that Ms. Shimata genuinely wanted to provide assistance and emotional support for her mother. However, DoD wanted to be convinced that the health conditions of her family members had worsened while she was in Germany, and had progressed to the point where her presence was needed immediately and permanently in Hawaii. The information which Ms. Shimata provided to DoD was not convincing. She provided very little information from doctors regarding the health conditions of her family, and did not return to Hawaii for a visit so she could make her own assessment of the situation there. Based upon the facts it had available, DoD reasonably concluded that Ms. Shimata had not provided an acceptable reason for failing to complete her thirty-six month tour in Germany. Because Ms. Shimata's return to Hawaii was voluntary, DoD reasonably exercised its discretion when it decided not to reimburse her return travel and transportation expenses.

The claim is denied.

MARTHA H. DeGRAFF
Board Judge