



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

June 12, 2008

CBCA 1059-RELO

In the Matter of CARLOS N. LACY

Carlos N. Lacy, Desoto, TX, Claimant.

JoAnne Roundtree, Supervisor, Chief PCS Travel Accounting, Department of Veterans Affairs, Austin, TX, appearing for Department of Veterans Affairs.

DRUMMOND, Board Judge.

Background

In 2003, claimant, Carlos N. Lacy, accepted a position as a staff pharmacist with the Department of Veterans Affairs (VA or agency), in Murfreesboro, Tennessee. This was his first post of duty with the Federal Government. He relocated from Beaumont, Texas, to Tennessee to accept this position, and the agency reimbursed claimant \$8777.93 for relocation expenses associated with his move to Tennessee.

Mr. Lacy signed the mandatory service agreement requiring him to remain in federal service for at least twelve months. The agreement provided that in the event he failed to complete his obligation to remain employed by the Government for at least twelve months, he would be required to repay the relocation expenses incurred by the Government to move him to Tennessee. One exception to this requirement was that if he was separated from the service for “[c]ompelling personal reasons which are beyond . . . [his] control and which are acceptable to the VA,” repayment need not be made.

Mr. Lacy moved to Tennessee and reported to his duty station in Murfreesboro on June 1, 2003. He resigned from federal service in November 2003, six months after his relocation. On November 20, 2003, the agency billed claimant for \$8777.93 for breach of his service agreement because of claimant’s separation from federal service earlier that month.

Asserting that he had been misled about future advancement opportunities as the reason for his resignation, Mr. Lacy asked the agency to waive repayment of the debt. In a memorandum to the agency, Mr. Lacy stated that he was led to believe that once he joined the agency he could move quickly into a clinical pharmacist position, which he later learned was not true. Mr. Lacy admitted that he was unfamiliar with federal promotion practices, especially the “time-in-grade” requirements, and offered no persuasive documentary evidence to corroborate his assertions as true. The agency refused to waive repayment of the \$8777.93, concluding that his resignation was not for reasons beyond his control and acceptable to the agency.

Mr. Lacy has asked the Board to review the agency’s determination not to waive the debt. In his correspondence to the Board, Mr. Lacy argued that there is nothing in his service agreement that requires that the twelve-month period be consecutive or completed with his former agency, as he subsequently returned to federal service after a break of approximately two years.

Discussion

The statutory authority under which the agency paid claimant’s expenses of relocation from Texas to Tennessee, 5 U.S.C. § 5724(I) (2000), specifically requires that such expenses be paid only after the employee agrees in writing to remain in government service for twelve months after his appointment. It further provides that if the employee violates the agreement, unless he is separated for reasons beyond his control that are acceptable to the agency, the money spent for such expenses “is recoverable from the employee as a debt due the United States.” See *Nancy C. Johnson*, GSBCA 16612-RELO, 05-1 BCA ¶ 32,931; 41 CFR 302-2.14 (2003).

Under the terms of the service agreement, claimant agreed to remain in the service of the Government for twelve months. Contrary to claimant’s argument, the twelve-month period of required service is consecutive. See *Amy Oestreich*, GSBCA 16489-RELO, 05-1 BCA ¶ 32,852 (2004) (citing *Finn v. United States*, 428 F.2d 828 (Ct. Cl. 1970)).

While Mr. Lacy did eventually return to federal service, the facts remain that he resigned his initial position short of the twelve-month period and did not return to federal service for approximately two years. Under Office of Personnel Management regulations, an “appointment” is defined as the initial employment of a person who is not currently employed by the agency. A break in service is defined as a period of four or more calendar days during which an individual is no longer on the rolls of an executive agency. 5 CFR 300.

703 (2003). Since Mr. Lacy resigned before the twelve-month period, he was subject to the consequences prescribed by statute, 5 U.S.C. § 5724(I), and the Federal Travel Regulation, 41 CFR 302-2.14 (2003), for violating the service agreement, unless the violation was beyond his control and acceptable to the agency concerned.

The determination whether or not to release an employee from his service agreement is a matter of agency discretion; the determination will not be overturned unless there is no reasonable basis for it. *Thomas M. Stan*, GSBCA 16679-RELO, 05-2 BCA ¶ 33,063; *see Amy Oestreich*. Here, the agency did not abuse that discretion when it decided that claimant's resignation was not for reasons beyond his control and acceptable to the agency. Claimant suggests that he was misled about future career advancements. Such vague statements are not sufficient for overturning an agency's determination. Claimant has offered no persuasive evidence which demonstrates that his resignation was anything other than voluntary. In the absence of evidence to the contrary, the agency's decision that his resignation was not beyond his control and acceptable to the agency was reasonable and well within the agency's discretion.

Decision

Accordingly, the Board must deny this claim.

JEROME M. DRUMMOND
Board Judge.