



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

April 18, 2008

CBCA 935-TRAV

In the Matter of VICKY HAWKINSON

Vicky Hawkinson, Anchorage, AK, Claimant.

Rita Dotomain, Alaska Area Native Health Services, Indian Health Service, Anchorage, AK, appearing for Department of Health and Human Services.

KULLBERG, Board Judge.

Claimant, Vicky Hawkinson, seeks a review of the denial of her request for overseas tour renewal agreement travel (OTRAT), which is reimbursed travel for an overseas employee and his or her immediate family upon completion of a tour and the agreement to serve an additional tour. Ms. Hawkinson has served tours continuously for various agencies of the Government in Alaska since her transfer there in 1978, and she has been allowed OTRAT upon her completion of previous tours. Her present employer, the Indian Health Service (IHS), denied her recent request for OTRAT. IHS contends that Ms. Hawkinson's right to OTRAT was under an agreement with her previous agency, the Bureau of Land Management (BLM). We find that IHS cannot assert the lack of an agreement with Ms. Hawkinson as grounds for denying her OTRAT if she is otherwise eligible under applicable statute and regulation.

Background

Ms. Hawkinson was transferred from Livingston, Montana, to Anchorage, Alaska, by the Fish and Wildlife Service in 1978. Since her transfer, she has been employed continuously in Alaska by the Government. She transferred to IHS in 1993 and then to the

Alaska Native Health Consortium in 1999. In 2001, she transferred to BLM, and she then returned to her present employer, IHS, on September 2, 2007.

Since her transfer to Alaska, Ms. Hawkinson has executed various employment agreements in which she agreed to an additional tour of government employment in Alaska. Upon completion of her tour and her execution of an agreement to remain in government service for another tour, she and her immediate family went on OTRAT. On June 27, 2005, while she was employed by BLM, she executed an employment agreement that stated in pertinent part:

I will remain in Federal Service for an additional twenty-four (24) months following my reporting date. I was originally assigned, appointed, or transferred to Alaska on or before September 8, 1982, with no break in the assignment. Entitlement is retained indefinitely for consecutive tours of duty in Alaska. Tour renewal travel authorized.

Ms. Hawkinson's most recent OTRAT was in December of 2006.

Shortly after her transfer to IHS, on September 18, 2007, Ms. Hawkinson inquired about IHS policy regarding OTRAT, and she indicated an interest in scheduling OTRAT in December of 2008. She was advised by IHS that her entitlement to OTRAT was under her agreement with BLM, and IHS was not a party to that agreement. Ms. Hawkinson brought this claim as a result of the denial of her request for OTRAT.

Discussion

An employee is entitled OTRAT under the requirements set forth in 5 U.S.C. § 5728 (2000) and the regulations prescribed under that statute. The Federal Travel Regulation (FTR) defines OTRAT as reimbursed travel for an employee and his or her immediate family to that employee's place of residence between overseas tours of duty. 41 CFR 302-3.209 (2007) (FTR 302-3.209). Employees who have served tours continuously in either Alaska or Hawaii since September 8, 1982, are entitled to OTRAT under the following FTR provision:

May I receive reimbursement for tour renewal travel when my travel is between two places within the United States?

You may only receive reimbursement for tour renewal travel when your tours are between two places within the U.S. if you are an employee who is traveling from Alaska or Hawaii, and:

(a) You will continue to serve consecutive tours of duty within the same state from which you're traveling, and on September 8, 1982 you were:

(1) Serving your tour in one of these areas and have continued to do so; or

(2) En route to a post of duty in Alaska or Hawaii under a written service agreement to serve a tour of duty; or

(3) In the process of performing a tour renewal travel and has [sic] since then entered into another tour of duty in Alaska or Hawaii[.]

FTR 302-3.214. Ms. Hawkinson was transferred to Alaska in 1978 and has served continuously there since her transfer. She is, consequently, entitled to OTRAT under that FTR provision.

IHS argues that Ms. Hawkinson's right to OTRAT was under an agreement with BLM, and that IHS was not a party to that agreement. The General Accounting Office (presently the Government Accountability Office), which previously decided federal employee travel and relocation claims, held the following:

An employee 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. 37 Comp. Gen. 348 (1958). 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.

Dick D. Hendricks, B-205137 (May 18, 1982). It is statute, 5 U.S.C. § 5728, rather than an agreement with an agency, that is the basis for an employee's entitlement to OTRAT. IHS, therefore, cannot use the lack of an agreement to deny Ms. Hawkinson OTRAT if she meets the requirements for it under statute and regulation.

Decision

Ms. Hawkinson's claim is granted.

H. CHUCK KULLBERG
Board Judge