

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

November 2, 2006

GSBCA 16952-RELO

In the Matter of RAYMOND B. PROVOST

Raymond B. Provost, Blaine, WA, Claimant.

Harry Bunn, Chief, Travel Section, National Finance Center, Customs and Border Protection, Department of Homeland Security, Indianapolis, IN, appearing for Department of Homeland Security.

PARKER, Board Judge.

Background

When Raymond Provost was transferred in June 2005 from Ottawa, Canada, to Blaine, Washington, he signed an agreement in which he promised to remain in the service of the Federal Government for at least twelve months following the date of his transfer. According to the agreement:

In the event that I violate this agreement, including my failure to effect the transfer, any funds expended by the United States for expenses in connection with my transfer shall be recoverable from me as a debt due the United States.

Citing medical problems that were beyond his control, Mr. Provost retired on October 1, 2005 -- less than four months after his relocation -- and asked his employer, the

Department of Homeland Security's Customs and Border Protection, to waive repayment of the relocation expenses.¹

In response to the agency's request for documentation of the medical issues that led to his retirement, Mr. Provost provided a note from his doctor with just the following written on a prescription form:

Due to multiple medical problems it is suggested he not work [more than] 8 hrs/day.

The agency reviewed the note and determined that Mr. Provost's reason for leaving government employment was not beyond his control and acceptable to the agency. Mr. Provost has asked the Board to review the agency's determination, explaining that he had emergency surgery in August 2005 and felt unable to perform his duties.

Discussion

An agency may pay relocation allowances when an employee is transferred only after the employee agrees in writing to remain in government service for twelve months after his transfer, unless separated for reasons beyond his control that are acceptable to the agency concerned. If the employee violates the agreement, the money spent by the Government for the allowances is recoverable from the employee as a debt due the Government. *Nancy C. Johnson*, GSBCA 16612-RELO, 05-1 BCA ¶ 32,931. The Federal Travel Regulation sets forth the rule:

Will I be penalized for violation of my service agreement?

Yes, if you violate a service agreement (other than for reasons beyond your control and which must be acceptable to the agency), you will have incurred

¹If Mr. Provost had chosen to retire immediately upon completion of his tour of duty in Canada, he would have been entitled to one-way return transportation for himself and his family, per diem for himself only, and transportation and temporary storage of his household goods. 41 CFR 302-3.101 tbl.F (2005). The agency subtracted those expenses from the amount it claims to be owed in connection with Mr. Provost's 2005 transfer. Mr. Provost's claim for \$8239 is thus for the difference between the amount the agency paid in connection with his 2005 transfer and the amount he would have received had he retired before being transferred to Blaine.

a debt due to the Government and you must reimburse all costs that your agency has paid towards your relocation expenses.

41 CFR 302-2.14 (2005).

It is within an agency's discretion to determine whether, under the particular circumstances presented, a separation from service was for a reason beyond an employee's control and acceptable to the agency. *Jeanne Hehr*, GSBCA 16936-RELO (Oct. 12, 2006). Here, the agency did not abuse that discretion when it decided that Mr. Provost's retirement was not for reasons beyond his control and acceptable to the agency. Mr. Provost's evidence to the contrary consists of a one-sentence note from his doctor that says it is "suggested" that Mr. Provost not work more than eight hours per day. That is a long way from saying that Mr. Provost's deteriorating health necessitated his retirement. Although we have reversed as unreasonable an agency's determination that a radical change in health (of a relative, in that case) was not beyond the employee's control and acceptable to the agency, *id.*, we see no basis for doing so here. Based on the information provided by Mr. Provost, the agency's decision that his retirement was not beyond his control and acceptable to the agency was reasonable and well within the agency's discretion. Accordingly, the claim is denied.

ROBERT W. PARKER
Board Judge