

# Board of Contract Appeals

General Services Administration  
Washington, D.C. 20405

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November 28, 2000

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GSBCA 15332-RELO

In the Matter of JOSE CABRERA, JR.

Jose Cabrera, Jr., APO AA, Claimant.

C. Bruce Sheaffer, Comptroller, National Park Service, Department of the Interior, Washington, DC, appearing for Department of the Interior.

**GOODMAN**, Board Judge.

Claimant, Jose Cabrera, Jr., is a former employee of the National Park Service, Department of Interior. In July 1999 he resigned from his position with the agency before fulfilling a twelve-month commitment following a permanent change of station (PCS) from Fort Rucker, Alabama, to Big Cypress, Florida. The agency has demanded repayment of \$6392.55 in relocation costs, and claimant has requested that this Board determine whether or not he is obligated to pay the debt.

## Background

On October 13, 1998, claimant signed an agreement to remain in Government service for twelve months from his entry-on-duty date of October 25, 1998. That agreement stated in relevant part:

In connection with my transfer within the continental United States, in the National Park Service, I hereby agree to remain in the Federal Government Service for 12 months following the effective date of transfer in consideration of payment by the Federal Government of travel, transportation and other moving expenses . . . .

In the event I fail to remain in the Federal Government Service for a period of 12 months following the effective date of my transfer, unless separated for reasons beyond my control and acceptable to the agency . . . concerned, any monies expended by the Federal Government on account of such travel and transportation and other allowances pursuant to the above cited authority shall be recoverable from me as debt due the United States.

By letter dated July 13, 1999, claimant advised the agency that he was resigning his position as an employee of the Federal Government. The letter read in relevant part:

I . . . regret to inform you that I have decided to resign from my position . . . .  
I have been offered a job that I decided to accept. This new job pays more than [my current position].

The letter made no mention of any other reason why claimant had decided to resign his position. Thereafter, claimant received a memorandum from the agency's administrative officer dated July 21, 1999, which advised that because claimant was resigning prior to the expiration of the twelve month period after his transfer, claimant would be liable for the moving costs incurred by the Government for his last transfer, in the estimated amount of \$6393.

Claimant states that when he received the memorandum he asked about it "and was told that I had to request a waiver based on the particulars of my case, which I did." Claimant sent the agency a letter dated August 30, 1999, which stated that the primary reason for leaving was a family hardship, which he was not able to disclose at the time of his resignation. He requested that the Government waive his obligation to repay the moving costs from his last transfer. Alternatively, he requested that the amount he owed be prorated so that he would pay the Government one-sixth of the amount due as proportionate to the two months remaining in his one-year commitment (approximately \$1066.42).

By letter dated March 13, 2000, the agency denied claimant's request, stating as follows:

The [Federal Travel Regulation (FTR)] authorize[s] agencies to grant waivers for debts that arise out of erroneous payment of pay or allowance, or an erroneous payment of travel, transportation or relocation expenses. Since this debt is not a result of an erroneous payment, we cannot consider a waiver of the debt.

Claimant requested that this Board review the agency's decision not to waive the debt. Claimant's request to this Board, contained in a letter dated April 22, 2000, read in relevant part:

At the time of my resignation I had worked at Big Cypress for 10 months. When I sent my letter of resignation I received a memorandum dated July 21, 1999 stating the particulars about the contract of employment. I asked about the letter and was told that I had to request a waiver based on the particularities of my case, which I did.

Claimant's letter stated further that he requested a two-month delay in beginning work for his new employer, but this was denied because of the employer's urgent need for an individual to fill the position. According to claimant, he was then faced with a decision -- fulfill his commitment to remain in Government service for twelve months following his transfer to Big Cypress or accept the new job. He chose to accept the new job because it was

in a location closer to the place where his wife was caring for her sick mother -- a concern that he did not wish to raise in his initial letter of resignation.

The agency responded to the Board by letter dated June 20, 2000, advising that claimant's initial resignation letter did not mention any reason for claimant's resignation other than the acceptance of a higher-paying job and that the agency informed claimant as to the obligation arising from his employment agreement. The letter reads further:

Even though [claimant] did have a need [arising from family medical problems], we still do not consider the reason for leaving as beyond his control or for the convenience of the Government. Therefore, he should be required to reimburse the [agency] the \$6,392.55 in relocation costs.

#### Discussion

Statute and the FTR require, as a condition of having the Government pay relocation expenses, that a transferred employee agree in writing to remain in the service of the Government for twelve months following the effective date of the transfer, unless separated for reasons beyond his control that are acceptable to the agency. 5 U.S.C. § 5724(i) (Supp. IV 1998); 41 CFR 302-1.5(a) (1998). If the employee fails to comply with the agreement:

the money spent expended by the United States for the expenses and allowances authorized is recoverable from the employee as a debt due the Government.

5 U.S.C. § 5724(i). The agreement signed by claimant when he transferred to his last Government position clearly set forth these terms.

When claimant resigned his position, his initial letter to the agency did not mention any reason for the resignation other than his acceptance of a higher-paying position. Only after he received a memorandum advising him of his obligation to repay the costs of his previous move did he state other reasons for his resignation. The agency determined that the reasons stated were not beyond claimant's control and that there was no legal basis to relieve claimant from his obligation to repay the Government.

The agency may permit claimant to keep the relocation benefits it paid him only if claimant did not fulfil his twelve-month employment commitment for a reason beyond his control and acceptable to the agency. We agree with the agency that claimant's reason for leaving Government service was primarily for claimant's personal convenience, rather than something beyond his control. The reason originally given by claimant -- a desire to accept a higher-paying job -- surely was a matter within his control. The reason given later -- a desire to be closer to where his wife would be living while she cares for her sick mother -- is at least related to a cause beyond his control (the mother's infirmity). We have held, however, that an employee who breaks his employment commitment solely to join a spouse who is transferred to another city is not eligible for retention of relocation benefits previously paid him. John A. Bukowski, GSBCA 14724-RELO, 99-1 BCA ¶ 30,200 (1998). Mr. Cabrera's situation does not seem especially different from this one. His justification is also

questionable in that his new job would not take him to his wife's location until four months after the job begins.

Claimant asks alternatively if the amount due could be prorated based upon the fact that he fulfilled ten months of his twelve-month commitment. There is no statutory or regulatory authority to prorate the amount due based upon the number of months of service. Bukowski.

Decision

Claimant is obligated to repay the agency \$6395.22.

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ALLAN H. GOODMAN  
Board Judge