

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

June 12, 2001

GSBCA 15567-RELO

In the Matter of ELMER F. WILLIAMS

Elmer F. Williams, Aberdeen Proving Ground, MD, Claimant.

Sarah C. Graham, Chief, United States Army Senior Executive Service Office, Department of the Army, Washington, DC, appearing for Department of the Army.

NEILL, Board Judge.

The claimant in this case is Mr. Elmer Williams, a civilian employee of the Department of the Army and a career appointee in the senior executive service (SES). The Army has advised him that he is not entitled to reimbursement of transportation and moving expenses he expects to encounter in connection with his planned separation from Government service. He believes that he is legally entitled to this benefit and asks that we review the Army's decision. We affirm the agency's determination.

Background

In August 1997, Mr. Williams, who at the time was serving in a GS-15 position in San Antonio, Texas, was given a limited term SES appointment as Director for Civilian Personnel Regionalization at the Army's Aberdeen Proving Ground in Maryland. In 1999, he competed and was selected for a career SES appointment. His duty station for the career appointment was also at Aberdeen Proving Ground.

In January of this year, the Army's Personnel and Employment Service in Washington, D.C., advised Mr Williams that he was not entitled to "last move home" benefits as a career appointee in the SES because his last geographical move occurred when he was appointed to a limited term SES position and not when he was later given a career SES appointment.

Mr. Williams' dispute with his agency centers on a provision contained in Section 5724(a)(3) of Title 5 of the United States Code and our interpretation of the same provision in a recent decision of this Board, Arnett M. Flowers, GSBCA 15267, 00-2 BCA ¶ 30,953. The provision in question states that an SES career appointee is entitled to the travel and moving expenses to the place where he will reside after separation from the Government provided certain conditions are met. The particular requirement of concern in this case is the requirement that the official be previously "transferred in the interest of the Government

from one official station to another for permanent duty as a career appointee in the Senior Executive Service" 5 U.S.C. § 5724(a)(3) (1994 & Supp. V 1999).

In implementing this statutory provision, the Federal Travel Regulation (FTR), which applies to all Government employees, explains that, under this particular eligibility requirement, the official must have been transferred or reassigned geographically in the interest of the Government and at the Government's expense from one official station to another for permanent duty. This is said to include a transfer or reassignment:

- (1) From an SES career appointment to another SES career appointment;
- (2) From an SES career appointment to an appointment outside the SES . . . and the employee elects to retain SES retirement benefits under 5 U.S.C. § 3392; or
- (3) From other than an SES career appointment, including an appointment in a civil service position outside the SES, to an SES career appointment

41 CFR 302-1.101(a) (2000) (FTR 302-1.101(a)).¹

In considering Mr. Williams' request, the Army concluded that he did not meet this particular requirement. It reasoned that his last geographical move was from other than an SES career appointment to a limited term SES appointment, rather than to an SES career appointment. Mr. Williams' career appointment was not made until after he had been at Aberdeen Proving Grounds for some time and did not require a geographical move.

The agency does well to distinguish between an SES career appointment and an SES limited term appointment. By statute the former is an appointment to a position based on approval by the Office of Personnel Management; the latter is a nonrenewable appointment for a term of three years or less to an SES position the duties of which will expire at the end of such term. 5 U.S.C. § 3132(a)(4), (5) (1994). The FTR provision regarding the right of certain SES officials to "last move home" benefits expressly provides that the term "career appointee," as used in the regulation, is to be understood as defined in statute. FTR 302-1.100(a)(i).

It is, therefore, quite clear from both statute and regulation that, as an employee moved at Government expense from a non-SES position, Mr. Williams had to be transferred to an SES career appointment in order to qualify for "last move home" benefits. This simply did not occur.

Can it be argued, however, that, because Mr. Williams was eventually given a career appointment after his move to Maryland, his transfer there was tantamount to a transfer to an SES career appointment? It is here that the claimant relies heavily upon our decision in the Flowers case. In that case the claimant's agency had concluded that Mr. Flowers was not

¹The Joint Travel Regulations (JTR), which supplement the FTR with applicability to civilian employees of the Department of Defense, such as Mr. Williams, have substantially the same provision. See JTR C4801.

entitled to "last move home" benefits because the assignment to his new duty station became effective before he became a member of the SES. Thus, in the agency's view, Mr. Flowers' transfer was from one non-SES position to another non-SES position. We concluded instead that the condition of eligibility had been met because it was clear from the record that the transfer of the employee was in fact for permanent duty as an SES career appointee. In this regard we wrote:

If having the employee serve in an SES career position is the purpose of the relocation, this condition is met, no matter whether, technically, the appointment occurs on any particular day.

Flowers, 00-2 BCA at 152,777.

The rationale used by the Board in Flowers cannot be used in support of Mr. Williams' claim. Based upon the facts before us, we cannot conclude that Mr. Williams relocated from San Antonio to Aberdeen Proving Grounds to serve in an SES career position. It is a matter of record that he relocated from San Antonio to Aberdeen to accept a limited term appointment -- which by law is altogether distinct from a career appointment. Further, his ultimate selection for his career appointment was hardly assured at the time of his transfer from San Antonio. He himself has advised us in his comments on the claim that, prior to his selection a few years later for the SES career appointment, there was an intervening world-wide competition for the post.

We, therefore, affirm the agency determination that Mr. Williams is not entitled to "last move home" benefits. His claim is denied.

EDWIN B. NEILL
Board Judge