

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

February 22, 2002

GSBCA 15722-RELO

In the Matter of THOMAS A. RIOPELLE

Thomas A. Riopelle, Washington, DC, Claimant.

Dana A. Brown, Assistant Director, Office of Administration, United States Secret Service, Washington, DC, appearing for Department of the Treasury.

NEILL, Board Judge.

Pursuant to 31 U.S.C. § 3529 (Supp. V 1999), the United States Secret Service (USSS) has asked our opinion on whether one of its employees is entitled to relocation benefits on the occasion of his retirement. The employee, Mr. Thomas A. Riopelle, is a member of the Senior Executive Service (SES). The benefits in question are those for which provision is made in section 302-1.103 of the Federal Travel Regulation (FTR), 41 CFR 302-1.103 (2001). Under the FTR, career appointees to the SES, upon separation from federal service for retirement, may receive certain relocation benefits. Principal among these benefits are the payment of travel costs for the employee and his or her immediate family and the cost of moving the family's household goods from the employee's last official station to the place where the employee has elected to reside upon retiring.

To be eligible for these relocation benefits, the employee must meet certain specific criteria set out in the FTR. The criterion of concern to the agency in this case is that which states that the employee, at the time of separation, must be eligible to receive an annuity under the Civil Service Retirement System (CSRS) or the Federal Employees Retirement System (FERS). See FTR 302-1.101(d). The agency explains that certain career SES appointees of the USSS, such as Mr. Riopelle, who were hired prior to January 1, 1984, do not participate in either the CSRS or the FERS, but rather have elected to participate in the District of Columbia Police and Firefighters Retirement and Disability System (the D.C. Retirement System).

One unique feature of the D.C. Retirement System is that, in lieu of separating fully from federal service, a federal employee retiring under that system may accept another federal service position, either with or without a break in service, and begin contributing to FERS while drawing full retirement benefits from the D.C. Retirement System.

The question posed here by the agency is whether an SES employee who is retiring and is otherwise eligible for the SES relocation benefits under the FTR may still receive these benefits if he or she is a participant in the D.C. Retirement System rather than in the CSRS or the FERS. The agency further asks if the answer to this question would in any way be affected by the fact that the employee plans to separate permanently from federal service as opposed to continuing in federal service either with or without a break in service.

The claimant in this case, Mr. Riopelle, has submitted his own comments on the agency's request for our opinion. He believes that the FTR's failure to mention the D.C. Retirement System in that part of the regulation which refers to annuities in the CSRS or the FERS is nothing more than an oversight, given the fact that so few SES retirees actually qualify for coverage under the D.C. Retirement System. He also believes that this retirement benefit is in recognition of the contributions retiring SES officials have made over the course of their careers and should not, therefore, depend on the retirement system they have elected to use.

Discussion

Persuasive as the claimant's arguments may be for not applying the requirement set out in FTR 302-1.101(d) that the SES official be eligible for an annuity under either the CSRS or the FERS, the fact is that this requirement is set out in black and white in the regulation itself. Neither we nor Mr. Riopelle's agency has the authority to waive its application. It is well established that, absent a specific provision in statute or regulation which might permit it under certain circumstances, neither an agency nor this Board has the authority to waive the applicability of FTR provisions for any federal employee who is subject to them. E.g., Daniel H. Coney, GSBCA 15444-RELO, 01-2 BCA ¶ 31,500; Fred Borakove, GSBCA 15379-RELO, 01-1 BCA ¶ 31,409; Tanya Cantrell, GSBCA 15191-RELO, 00-1 BCA ¶ 30,894; Michael J. Kunk, GSBCA 14721-RELO, 99-1 BCA ¶ 30,164 (1998); Defense Intelligence Agency Employee, GSBCA 14745-RELO, 99-1 BCA ¶ 30,117 (1998).

Not even the Administrator of General Services (the head of the General Services Administration), to whom Congress has assigned the responsibility of issuing the FTR, has the authority to waive the eligibility requirement set out in FTR 302-1.101(d) for this SES benefit. The FTR requirement that the SES official, upon separation, be eligible for an annuity under either the CSRS or the FERS is nothing more than a repetition of an identical requirement set out specifically in one of the several statutes passed by Congress with regard to the SES. See 5 U.S.C. § 5724(a)(3)(B).

In short, even if Mr. Riopelle is otherwise eligible for the SES relocation benefits provided for under FTR 302-1.103, we do not believe that he is entitled to these benefits because, as a participant in the D.C. Retirement System, he clearly cannot meet the requirement set out in FTR 302-1.101(d) and 5 U.S.C. § 5724(a)(3)(B) that he be eligible upon separation for an annuity under either the CSRS or the FERS. Given this basic regulatory and statutory requirement, and the claimant's obvious inability to meet it, our opinion remains the same regardless of whether the claimant plans to separate permanently

from federal service or plans to continuing in federal service either with or without a break in service.

EDWIN B. NEILL
Board Judge