

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

July 3, 2002

GSBCA 15752-RELO

In the Matter of CHARLES TASS

Charles Tass, APO Area Europe, Claimant.

Elizabeth F. Buchanan, Associate Deputy General Counsel (Fiscal), Office of General Counsel, Department of Defense, Washington, DC, appearing for Department of Defense.

GOODMAN, Board Judge.

Claimant, Charles Tass, is a civilian employee of the Air Force. He has requested that the agency reimburse certain amounts withheld from his pay and further relieve him of a debt allegedly owed as the result of his service in the Peace Corps. The agency has denied his request. The agency has requested that this Board render a decision on entitlement.

Factual Background

Claimant signed a transportation agreement on November 30, 1992, incident to a Government transfer from California to Texas. This agreement stated in relevant part:

I will remain in Government service for at least 12 months beginning with the date I report for duty at my new duty station, unless separated for reasons beyond my control and acceptable to the employing activity.

If I fail to fulfill the terms of this agreement . . . I will upon demand repay to the Government a sum of money equivalent to that expended [for my relocation costs].

Mr. Tass reported for duty in Texas on January 19, 1993. He then joined the Peace Corps on June 4, 1993. On April 8, 1994, the Defense Finance and Accounting Service (DFAS) deducted \$3340.89 in partial repayment of claimant's moving expenses of \$9049.59. Claimant served with the Peace Corps until May 26, 1995. On November 28, 1995, he asserted a claim for the return of the money that had been deducted in partial repayment of his moving expenses. Claimant asserts that his service with the Peace Corps constituted Government service for purposes of the transportation agreement, and that if Peace Corps service did not constitute Government service, any overpayment of relocation benefits should

be waived.¹ Claimant also asserts that because he returned to his duty station in Texas after his Peace Corps service and was reemployed by the Air Force for five additional years, this additional employment in Government service fulfilled the requirement of the transportation agreement to remain in Government service for twelve months.

Discussion

At the time claimant entered into his transportation agreement with the agency, the applicable statute read as follows:

An agency may pay travel and transportation expenses . . . when an employee is transferred within the continental United States only after the employee agrees in writing to remain in the Government service for 12 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 United States for the expenses and allowances is recoverable from the employee as a debt due the United States.

5 U.S.C. § 5724(i) (1988).

Claimant's transportation agreement contained the requirement to remain in Government service for twelve months, and the Government's right to recover the money paid in the event claimant separated for reasons not beyond his control.

The agency has asked this Board to determine whether claimant's service with the Peace Corps after service as a Government employee fulfills the requirements of the law and the transportation agreement for claimant to "remain in Government service."² We determine

¹ The Defense Finance and Accounting Service (DFAS) sought an opinion from the General Accounting Office (GAO) in December 1995. GAO forwarded the claim to this Board. This Board forwarded the claim to the Defense Office of Hearings and Appeals (DOHA) on March 6, 1997, because of a finding that the claim requested a waiver and not an initial determination of entitlement. On April 29, 1997, DOHA requested a final agency decision and administrative file from DFAS. DFAS issued a final decision on October 25, 1999, and re-transmitted the file to DOHA for a decision on waiver of overpayment. DOHA asked the DOD Office of General Counsel for a decision on entitlement prior to determining whether a waiver of overpayment was appropriate. Accordingly, the agency has asked this Board for a decision regarding entitlement.

² The record of this case contains two legal opinions on this issue. The opinion of the Brooks Air Force Base (AFB), Office of the Staff Judge Advocate concludes that claimant's Peace Corps service fulfills the requirements of the transportation agreement, while the opinion of DFAS offers a legal opinion to the contrary. Claimant has submitted detailed comments regarding many of the factual statements in that latter opinion. While our determination results in the same legal conclusions as the latter opinion, we do not adopt all factual findings in that opinion, nor do we find it necessary to address all issues raised in that

that claimant's service with the Peace Corps is not "Government service" as required by the law and the transportation agreement.

Under 22 U.S.C. § 2504(a), as it read at the time of claimant's transfer and still reads today, Peace Corps volunteers "shall not be deemed officers or employees or otherwise in the service or employment of, or holding office under, the United States for any purpose," except to the extent otherwise provided in 22 U.S.C. §§ 2501-2523. The President has the authority to authorize travel, transportation, and other allowances for volunteers if he determines it to be necessary for their maintenance or to ensure their health and their ability to serve effectively. 22 U.S.C. § 2504(b). The President is further allowed to detail or assign volunteers to agencies. 22 U.S.C. §§ 2504(g), 2509(a)(1). In some circumstances, service as a Peace Corps volunteer is credited toward some civil service requirements "in the same manner as a like period of civilian employment by the United States Government." 22 U.S.C. § 2504(f).

Claimant makes the argument that the Peace Corps volunteer service should be considered as service for the United States Government for the purpose of fulfilling transportation agreements. He bases this argument on 5 U.S.C. § 2504(f)(1)(B), under which periods of volunteer service shall be credited "in connection with subsequent employment" in the same manner as civil service employment for the purposes of determining seniority, reduction in force (RIF), lay-off rights, leave entitlement, "and other rights and privileges based upon length of service under the laws administered by the Director of the Office of Personnel Management, the Foreign Service Act of 1980, and every other Act establishing or governing terms and conditions of service of civilian employees of the United States Government."³

It is clear that 22 U.S.C. § 2504 does not state that Peace Corps volunteer service will be credited to fulfill requirements which existed under previous federal employment, such as requirements of a prior transportation agreement entered into under 5 U.S.C. § 5724(i). The plain language of 22 U.S.C. § 2504(f)(1) by its terms applies only to employment subsequent to Peace Corps volunteer service. Claimant's prior employment with the Air Force, and the transportation agreement which preceded that employment, are not within the scope of 22 U.S.C. § 2504(f)(1).

The legislative history of this section states the purpose of its focus on subsequent government service. The House Report on subsection 5(f) of the Peace Corps Act (22 U.S.C. § 2504(f)) states: "This subsection is designed to encourage those Peace Corps volunteers with service [in the Peace Corps] behind them to consider professional careers in Government service." 1961 U.S.C.C.A.N. 2851 (emphasis added). The legislative history further states that the credit for volunteer service toward such matters as retirement seniority

opinion.

³ This is the provision relied upon by the Brooks AFB, Office of the Staff Judge Advocate in taking the position that volunteer Peace Corps service should count toward the service required under a transportation agreement entered into prior to the Peace Corps volunteer service.

applies "in the event that they [Peace Corps volunteers] later become employed in any civilian employment system." Id. at 2851(emphasis added).

Neither the language of the statute nor its legislative history indicates that Congress intended that Peace Corps service would fulfill requirements which arose during prior Government service, such as the requirements of prior transportation agreements. While Congress stated that it intended to make it easier for former volunteers to enter Government service, it said nothing about encouraging employees to leave their positions in order to volunteer in the Peace Corps.

Claimant makes an additional argument. He states:

Even if you claim that the Peace Corps is not Government service, my reemployment by the Air Force in 1996 after returning from the Peace Corps has fulfilled the intent of the Transportation Agreement. . . .

The intent of the Transportation Agreement is to require an employee to continue working for the Federal Government for at least 12 months after the Government pays for moving expenses to a new location, which is exactly what I did. Since moving at Government expense to San Antonio in 1993, I worked for the Peace Corps for two years before returning and working for the Air Force for another five years. My move back to San Antonio after Peace Corps was at my own expense, not the Government. Therefore, I have fulfilled this transportation agreement many times over.

Thus, claimant argues that his return to Government service after the Peace Corps fulfilled the requirement of the transportation agreement to remain in Government service for twelve months. Claimant's argument lacks merit, as his actions were contrary to the plain meaning of the transportation agreement, which states:

I will remain in Government service for at least 12 months beginning with the date I report for duty at my new duty station, unless separated for reasons beyond my control and acceptable to the employing activity.⁴

The use of the word "remain" indicates that the twelve-month period should be continuous. Claimant did not remain in Government service for twelve months, but separated for reasons of his own convenience, within his control. According to the plain language of the transportation agreement, when claimant failed to fulfill the twelve-month requirement and left his Air Force employment, he became liable for the return of the travel funds under the agreement. This liability was not contingent. There was no provision that stated that claimant would not be liable if he returned to Government service in the future.

The fact that claimant did return to Government service by accepting another position with the Air Force after completing his Peace Corps duties does not relieve claimant of the

⁴ As noted previously, this language is substantially the same as that of the applicable statute.

liability that attached when he left Government service. It was claimant's choice to return to Government service; he was not required to do so.⁵

Decision

The claim is denied.

ALLAN H. GOODMAN
Board Judge

⁵ Claimant also argues that he was on Leave Without Pay (LWOP) for approximately eleven months while in the Peace Corps. The agency states that claimant was consistently denied requests for LWOP and any documentation indicating same was a clerical error. We need not determine if claimant was on LWOP, as LWOP is not sufficient to fulfill a transportation agreement once an employee has left federal employment. 71 Comp. Gen. 199 (1992).