

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

February 28, 2005

GSBCA 16505-RELO

In the Matter of DEBORA J. GREEN

Debora J. Green, D.V.M., Hubbard, TX, Claimant.

Robert Cooke, Chief, Fiscal Services Branch, Food Safety and Inspection Service, Washington, DC, appearing for Department of Agriculture.

DANIELS, Board Judge (Chairman).

Congress has prescribed that an agency may pay the expenses of a transferred employee's relocation 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." 5 U.S.C. § 5724(i) (2000). "If the employee violates the agreement," the statute provides, "the money spent by the Government for the expenses and allowances is recoverable from the employee as a debt due the Government." Id.; see also 41 CFR 302-2.13(a), -2.14 (2003).

Citing this law, the Department of Agriculture's Food Safety and Inspection Service (FSIS) has demanded that Dr. Debora J. Green, a former employee of that agency, repay the expenses the agency incurred in moving her to a new duty station. The move occurred in June 2003. Dr. Green agreed in writing to remain in Government service for twelve months after her transfer, but she resigned from the service nine months later, in March 2004.

Dr. Green contends that her resignation was "tantamount to a constructive removal at the Agency's discretion." She says that she was performing her duties to the best of her ability and resigned only because she was told that if she did not do so, she would be fired. In support of her position, she has enclosed a few electronic mail messages from her supervisor which express approval for actions she had taken. Evidently, Dr. Green believes that she was separated for reasons beyond her control that were irrationally imposed by FSIS. As a result, she apparently maintains, the agency should not be permitted to recover the relocation expenses it paid on her behalf, even though she did not remain in Government service for twelve months following her transfer.

The Court of Appeals for the Federal Circuit has held, for other purposes, that "where an employee is faced with the unpleasant alternative of resigning or being subjected to an adverse action, the resulting resignation cannot be considered an involuntary retirement unless the employee shows that the agency lacked reasonable grounds for threatening to take the adverse action." Terban v. Department of Energy, 216 F.3d 1021, 1026 (Fed. Cir. 2000); see also Tippett v. United States, 185 F.3d 1250, 1255 (Fed. Cir. 1999) (resignation is considered involuntary if it results from misrepresentation or deception on the part of government officers). Consistent with this holding, we consider that unless an employee can show that her resignation was effectively forced by the agency without reasonable grounds, the resignation will be presumed to have been voluntary, and if it occurs within twelve months of a transfer, the agency may recover as a debt the expenses it paid for the employee's relocation. Amy Oestreich, GSBCA 16489-RELO (Dec. 16, 2004).

When Dr. Green challenged the demand for repayment of the relocation expenses, FSIS conducted an investigation into the circumstances of her resignation. The report of the investigation states that Dr. Green repeatedly violated important direct orders as to whose seriousness she had been counseled, and also that she failed to document findings on which agency actions could be based. Although Dr. Green was given an opportunity to respond to the agency's position in this case – a position which is grounded on the report – she declined to do so. Her argument is based solely on the few electronic mail messages from her supervisor containing supportive comments. FSIS's grounds for requesting the employee's resignation appear reasonable on their face, and Dr. Green has neither secured a ruling from an appropriate forum which rejects them nor given us good cause for doubting them.

We conclude that Dr. Green's separation from Government service resulted from actions within her control. The agency's demand for repayment of the expenses it incurred to move her to her new duty station less than twelve months before that separation is therefore in accordance with statutory requirements.

STEPHEN M. DANIELS
Board Judge