

**United States Department of Labor
Employees' Compensation Appeals Board**

_____)
W.B., Appellant)

and)

DEPARTMENT OF JUSTICE, FEDERAL)
BUREAU OF PRISONS, Philadelphia, PA,)
Employer)
_____)

Docket No. 13-947
Issued: August 16, 2013

Appearances:
Thomas R. Uliase, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 12, 2013 appellant, through her representative, filed a timely appeal from the January 11, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP), which denied reimbursement of relocation expenses. Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

ISSUE

The issue is whether OWCP properly denied reimbursement of relocation expenses.

¹ 5 U.S.C. § 8101 *et seq.*

² Appellant does not appeal OWCP's January 15, 2013 loss of wage-earning capacity determination. Thus, it is not currently before the Board for review on this appeal. See 20 C.F.R. § 501.3.

FACTUAL HISTORY

This case was previously before the Board.³ On August 22, 2003 appellant then a 47-year-old clinical nurse, sustained an injury in the performance of duty when a cart rolled back on her left foot. OWCP accepted her claim for sciatica, left⁴ and paid compensation for temporary total disability.

Appellant found a job in the State of Washington and asked OWCP to reimburse her for more than \$9,000.00 in relocation expenses from New Jersey. In an August 27, 2009 decision, OWCP denied reimbursement on the grounds that it did not authorize the move. OWCP's hearing representative affirmed on February 19, 2010, noting that OWCP did not authorize or sponsor a job search outside appellant's geographical area, that appellant acted on her own initiative, and that she did not seek authorization in advance. The hearing representative noted that OWCP could not have found the offer suitable because it provided no information on the physical requirements of the position. Further, appellant did not remain in the position for one year.

The Board affirmed by a May 18, 2011 decision, finding that appellant did not meet the conditions for consideration of reimbursement. General Services Administration (GSA) regulations required employees whose moving expenses are paid by the Federal Government to remain in federal employment for one year after the move. Appellant remained in her new employment for only 10 days. The Board also found that OWCP gave due consideration to the reason appellant stopped work in her new position and, having found that reason unacceptable, did not abuse its discretion in denying reimbursement of relocation expenses.

In a July 9, 2012 decision, OWCP denied appellant's request for reimbursement of \$22,278.93 in relocation expenses from New Jersey to Florida, to accept a job at the Florida Department of Correction in 2010, and then from Florida back to New Jersey, to accept a job with the University of Medicine and Dentistry in 2011. It explained that her vocational rehabilitation services were closed out on September 23, 2009; that it did not sponsor an out-of-state job search; that it did not authorize any relocation expenses when she moved to Florida; and that it did not assess the job offer for suitability, nor could it have, as the physical demands of the position were not received until March 1, 2012. OWCP explained that it did not sponsor a job search outside the State of Florida and did not authorize any relocation expenses from Florida to New Jersey.

By decision dated January 11, 2013, OWCP's hearing representative affirmed, finding that appellant worked less than a year in her Florida job and was dismissed for "not performing the job to the employing establishment's satisfaction while on probation," according to a State of

³ Docket No. 10-1817 (issued May 18, 2011). The facts of this case as set out in the Board's prior decision are hereby incorporated by reference.

⁴ OWCP advised that it had also accepted thoracic or lumbosacral neuritis or radiculitis not otherwise specified and displacement of lumbar intervertebral disc without myelopathy. In an earlier appeal, the Board found that appellant failed to establish that she injured her left knee on August 22, 2003. Docket No. 07-1338 (issued March 18, 2008).

Florida unemployment letter.⁵ The hearing representative found that the evidence demonstrated that appellant was terminated for reasons that were unacceptable to OWCP.

On appeal, counsel contends that appellant satisfied the criteria for permitting payment of relocation expenses: she was no longer on the employing establishment's rolls, did secure employment that was found suitable by OWCP, and the employment was greater than 50 miles away. He noted that she was terminated from the Florida job not on account of her behavior. Counsel argued that there is no requirement in the regulations or OWCP FECA procedure manual that an employee who returns to work in the private sector remains in that position for a year.

LEGAL PRECEDENT

If possible, the employing establishment should offer suitable reemployment in the location where the employee currently resides. If this is not practical, it may offer suitable reemployment at the employee's former duty station or other location. Where the distance between the location of the offered job and the location where the employee currently resides is at least 50 miles, OWCP may pay such relocation expenses as are considered reasonable and necessary if the employee has been terminated from the employing establishment's employment rolls and would incur relocation expenses by accepting the offered reemployment. It may also pay such relocation expenses when the new employer is other than a federal employer. OWCP will notify the employee that relocation expenses are payable if it makes a finding that the job is suitable. To determine whether a relocation expense is reasonable and necessary, it shall use as a guide the federal travel regulations for permanent changes of duty station.⁶

OWCP regulations provide that an injured employee who relocates to accept a suitable job offer after termination from the employing establishment rolls may receive payment or reimbursement of moving expenses from the compensation fund. Relocation expenses are payable only to claimants who are no longer on the employing establishment rolls. They are payable whether the claimant still resides in the locale where he or she last worked and is offered employment in another area or whether the claimant has moved away from the locale where he or she was employed and is offered employment in either the original area or a different one.⁷

If the offered job is found suitable, medically and otherwise, OWCP may proceed to consider whether relocation expenses may be paid. If the decision is favorable, the letter to the claimant should note that GSA regulations require employees whose moving expenses are paid by the Federal Government to remain in federal employment for one year after the move. Should the claimant cease working for a reason unacceptable to OWCP, the relocation expenses will be declared an overpayment and handled according to the usual procedures.⁸

⁵ Appellant's employment as a Senior Registered Nurse with the Florida Department of Corrections was effective September 17, 2010 and ended on July 14, 2011.

⁶ 20 C.F.R. § 10.508.

⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reemployment: Determining Wage-Earning Capacity*, Chapter 2.814.6 (July 1997).

⁸ *Id.* at Chapter 2.814.6.d(2).

ANALYSIS

Appellant claimed reimbursement for relocation expenses. She changed jobs in the nonfederal workforce on several occasions. After being terminated from her federal position in 2004, appellant obtained a job in the State of Washington in 2009 and requested reimbursement for her relocation expenses from New Jersey to Washington. She obtained a job in Florida in 2011 and requested reimbursement for her relocation expenses from New Jersey to Florida. Appellant obtained a job back in New Jersey in 2011 and requested reimbursement for her relocation expenses from Florida to New Jersey.

The Board finds that OWCP did not abuse its discretion in denying appellant's request. Section 10.508 of the federal regulations, which allows OWCP to pay relocation expenses, is organized in a section titled: "Return to Work -- Employer's Responsibilities." This group of regulations addresses such issues as what actions the federal employing establishment must take to help return the injured employee to work, how the employing establishment may monitor the employee's medical progress to aid in returning the employee to suitable employment, and how the employing establishment should make an offer of suitable work. The focus is on returning the injured federal employee to suitable employment.

Section 10.508 is titled: "May relocation expenses be paid for an employee who would need to move to accept an offer of reemployment?" This regulation provides that OWCP may pay relocation expenses if it is not practical for the employing establishment to offer suitable reemployment in the location where the employee currently resides, but the employing establishment can offer suitable reemployment at another location at least 50 miles from the employee's current residence. If these and other conditions are met, the regulations allow OWCP to remove a possible impediment to returning the injured federal employee to suitable reemployment.

Section 10.508 also allows OWCP to pay such relocation expenses when the new employing establishment is other than a federal employer. Although the regulations and OWCP's FECA procedure manual do not address the matter directly, the context of the regulations is that OWCP's discretion to pay relocation expenses did not follow the former federal employee for the remainder of her working life. OWCP may properly exercise its discretion when an injured employee first returns to suitable nonfederal employment. That is consistent with the spirit of the "Return to Work" regulations, of which section 10.508 is a part. The Board can find no basis for extending that discretion any time the employee changes jobs in the nonfederal sector.

Counsel argued in the prior appeal that the relocation regulation was created to reward an employee for her diligent efforts to obtain employment outside her geographic area. Through her diligent efforts, appellant secured nonfederal employment in the State of Washington in 2009, and OWCP properly exercised its discretion, but that does mean OWCP retains discretion if she resigns that job for unacceptable reasons and finds another nonfederal job in another state, or is terminated from that job and finds another nonfederal job in yet another state.

It appears from the evidence that such career moves are private matters beyond the scope of the "Return to Work" regulations and beyond the scope of OWCP's discretion to reimburse relocation expenses under section 10.508. For this reason, the Board finds that OWCP properly

denied reimbursement of relocation expenses. The Board will affirm OWCP's January 11, 2013 decision.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

Counsel offers no justification for the view, implicit in his argument on appeal, that OWCP retains discretion to reimburse appellant for her relocation expenses from New Jersey to Florida and from Florida to New Jersey. As that discretion is not established under the circumstances of this case, it does not matter whether the Florida and New Jersey jobs were suitable or whether appellant was terminated from the Florida job not on account of her behavior. Nor does it matter whether she remained in her nonfederal position for at least a year.

CONCLUSION

The Board finds that OWCP properly denied reimbursement of relocation expenses.

ORDER

IT IS HEREBY ORDERED THAT the January 11, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 16, 2013
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board