

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

June 8, 2001

GSBCA 15490-RELO

In the Matter of DYNA DUNCAN

Dyna Duncan, Alexandria, VA, Claimant.

Maj. William D. Price, Deputy Director, Resource Services-Washington, Department of the Army, Washington, DC, appearing for Department of the Army.

BORWICK, Board Judge.

Claimant, Ms. Dyna Duncan, a civilian employee of the Department of the Army (agency), seeks permanent change of station (PCS) expenses upon her transfer from the United States Army Europe, Heidelberg, Germany, to the Headquarters, Department of the Army (HQDA), Arlington, Virginia. The agency denied claimant's request for PCS expenses because she stayed in her position in Heidelberg for only about eight months, thereby violating the terms of her transportation agreement that she complete her thirty-six month overseas tour of duty and forgo any Government-reimbursed PCS within the Department of Defense (DoD) for a period of twelve months from the date of her transfer to Heidelberg. We deny the claim since the agency correctly applied the provisions of the Joint Travel Regulations (JTR).

The facts as shown by the record are as follows. On August 3, 1999, the agency issued a PCS order for claimant's transfer from Fort McPherson, Georgia, to Heidelberg, Germany, where she would serve with the United States Army Europe (USAREUR) as a logistics management specialist. The move was deemed to be in the interest of the Government; the agency authorized relocation expenses including travel, ninety days' temporary storage of household goods (HHG), shipment of up to eighteen thousand pounds of HHG, temporary quarters subsistence allowance, and shipment of claimant's privately owned vehicle (POV). Claimant's duty reporting date was September 12, 1999.

Claimant signed a transportation agreement in which she acknowledged that, except as provided in JTR paragraph C4100, she would not be entitled to any further transfers within the DoD, at Government expense, for a period of twelve months from the date of the transfer. She also acknowledged that the policy did not preclude her acceptance of another position for which PCS allowances may not be allowed.

On November 23, 1999 -- less than three months after claimant started work at USAREUR HQDA -- the Office of the Deputy Chief of Staff for Logistics, Directorate of Transportation, Energy and Troop Support, Troop Support Division, advertised for a logistics management specialist.

The advertising and recruitment apparently was accomplished through the Army Civilian Career Evaluation System (ACCES) list. The agency describes ACCES as "An open continuous [vacancy] announcement with referral registration available to applicants at any time." HQDA LTR 690-01-1, app. A, § II A-5.a. The website Easy ACCES is used by applicants who wish to be referred for civilian career program vacancies by the agency. *Id.* app. A, § I A-1. A central referring office (CRO) sends a notification to the applicant each time he or she is referred, either by e-mail message or by notification letter. The notification will contain information about the vacant position such as location, duties and travel or overtime requirements. Applicants interested in referral for a position must submit the information requested in the notification by the indicated suspense date. *Id.*, app. A, § II A-5.b.

Applicants self-certify their qualifications for the positions in the ACCES registration area for the series and grade for which they are registering. HQDA LTR 690-01-1, app. A, § II A-5.g. Applicants mark grade levels for which they are qualified and for which referrals are desired; rate themselves based on knowledge criteria; provide narrative statements of accomplishment; state geographical preferences for vacancies; and maintain a resume qualification record. *Id.*, app. A, § II A-7.h.(3)(b)-(g). Career referral lists for promotion are limited to the applicants with the highest scores who have indicated availability for the vacancy location and have indicated a willingness to travel commensurate with the requirements of the position. *Id.*, app. B-1.c.(1).

On December 9, 1999, claimant applied for the position and was selected by HQDA, which requested a release date for claimant of April 23, 2000. Claimant decided to accept the job offer because it represented a promotion and an exceptional opportunity for career advancement.

On April 12, 2000, claimant submitted a request for travel orders to USAREUR for PCS reassignment to HQDA with an anticipated reporting date of May 8, and sought entitlement to shipment of her POV and HHG.

On April 18, USAREUR confirmed claimant's release to her new position in the continental United States (CONUS) with a duty reporting date of May 8. USAREUR also explained that it would not issue travel orders since the Government was not obligated to pay travel and transportation expenses for the move because the expenses for the transition were to be borne by the claimant.

Claimant states that she incurred \$11,177 of PCS costs, which later grew to \$21,864, including \$276 for airfare, \$1156 for POV shipment, \$4172 for HHG shipment, \$6207 for lodging, \$150 for miscellaneous expenses, \$6888 for real estate closing costs, \$2880 for subsistence expenses, and \$135 for taxi fare.

On July 14, 2000, the Deputy Chief of Staff for Logistics forwarded to the Department of the Army's Resource Service claimant's request for an exception to the agency's non-issuance of travel orders so that claimant could process a request for reimbursement. On September 21, 2000, the Resource Service determined that claimant was liable for the cost associated with the transfer to the CONUS permanent duty station and that claimant was not entitled to issuance of travel orders for reimbursement for her PCS move to HQDA because claimant had failed to comply with her transportation agreement.

Claimant submitted a claim to this Board arguing that since she was selected from an Army Career Program Mandatory Referral Level list, her PCS from USAREUR to HQDA was deemed to be in the best interest of the Government and she is entitled to PCS relocation benefits.

JTR C4100-C provides that except for movements described in subsections one through three (including agency-directed placement), a transfer within DoD at Government expense "is not authorized within [twelve months] of the employee's most recent PCS," except when the ordering official makes certain certifications not involved here.

JTR C1052-B.2.b.(4) provides that when an employee moves from an OCONUS activity to a CONUS activity the gaining activity will pay the listed PCS expenses for an: (a) employee who completes the prescribed tour of duty under the current agreement; (b) employee released from the period of service requirement specified in the agreement for reasons beyond the employee's control that are acceptable to the losing DoD component; (c) Army employee moved under the Civilian Career Management Program referral system who completes an initial OCONUS tour of duty and at least half of an additional tour in excess of twelve months or two-thirds of an additional tour of twelve months; or (d) employee with or without transportation agreements moved under the priority placement program.

Thus, under the JTR C4100-C, an employee who transfers within twelve months of a prior PCS has no entitlement to a second Government-reimbursed PCS. Under JTR C1052, the gaining agency will not fund a move from an OCONUS to a CONUS activity except under the conditions described therein.

Claimant argues she comes within an exception of JTR C4100-C. Exceptions one and three are not relevant here. Exception two of that provision refers to "movement of an employee in connection with an agency-directed placement." Claimant argues that her selection from the ACCES list amounts to an "agency-directed placement" and she is therefore entitled to a Government-reimbursed PCS move within twelve months of her last PCS. We do not agree. The ACCES list is a sophisticated job vacancy database. Applicants advertise themselves for selection to vacancies shown in the database by maintaining updated statements of knowledge levels, qualifications, and willingness to accept the positions if selected. We cannot conclude that referral using the ACCES list brings an employee within the agency-directed placement exception of this portion of the JTR, since the employee actively solicits and competes for job openings on the list.

Other provisions of the JTR do not exempt claimant from the JTR's rule that a transfer at Government expense is not authorized within twelve months of the employee's most recent PCS. JTR C4009-C provides that an employee serving under a transportation agreement at

any permanent duty station (PDS) who transfers to another DoD component, department or agency must be released from the period of service requirement specified in the employee's current agreement, provided that the employee remains in Government service for twelve months after reporting for duty at the new PDS. If the transfer involves PCS allowances to a new PDS, the gaining activity is responsible for all PCS costs.

Here the employee admits that the claimant's transfer and promotion were within the Department of the Army. The Department of the Army is defined as a single DoD component. JTR Appendix A. Consequently, in moving from Heidelberg to Washington, D.C., within the Department of the Army, claimant did not transfer to "another DoD component, department or agency" within the meaning of this provision of the JTR, and is not entitled to release from the period of service requirement in her transportation agreement, or from the rule of JTR C4100-C that transfers at the expense of the Government are not authorized within twelve months of the previous PCS. Additionally, under JTR C1052-B.2.b.(4)(c), the gaining activity will only pay for an Army employee moved under the Civilian Career Management Program referral system who completes an initial OCONUS tour of duty and at least half of an additional tour in excess of twelve months or two-thirds of an additional tour of twelve months.

Claimant notes that Army policy, as expressed in HQDA LTR 690-01-1, is that selections from the Department of the Army career program mandatory referral lists are generally considered in the best interest of the Government and PCS costs associated with career program selections must be paid. HQDA LTR 690-01-1, app. B at B-1(h). That policy does not eliminate the requirement that an employee who seeks PCS entitlements must comply with the commitments in the employee's transportation agreement or be released from those commitments under the JTR.

In denying claimant PCS costs, the agency correctly applied the JTR. The Board denies the claim.

ANTHONY S. BORWICK
Board Judge