

Board of Contract Appeals
General Services Administration
Washington, D.C. 20405

March 7, 2002

GSBCA 15614-RELO

In the Matter of JACKIE LEVERETTE

Jackie Leverette, Northport, NY, Claimant.

Stanley R. Sinclair, Chief Learning Officer, Employee Education System, Department of Veterans Affairs, Washington DC, appearing for Department of Veterans Affairs.

WILLIAMS, Board Judge.

Claimant, Mr. Jackie Leverette, challenges the determination of the Veterans Health Administration, Department of Veterans Affairs (VA), denying him relocation benefits in conjunction with his move from Germany to Northport, New York. Because claimant voluntarily applied for the position in Northport and relocation expenses were not authorized in the vacancy announcement, the agency correctly denied the claim.

Background

The VA's Veterans Health Administration Employee Education System (EES) issued Vacancy Announcement No. EES00-25 for a program support assistant, grade level GS-303-6 with an opening date of November 6, 2000, and a closing date of November 21, 2000. The location of the position was in Northport, New York, and the vacancy announcement expressly provided: "**Relocation: NO.**"

The agency did not authorize relocation expenses because it has determined that the local labor force normally provides a good pool of highly qualified candidates for clerical or administrative support positions such as this one. The VA Merit Promotion Policy, MP-5, pt. I, ch. 335, § B, ¶ 11.c(1), provides:

Generally, it not considered cost effective to transfer employees at GS-6 and below, or equivalent for wage grade employees at government expense; (movement of employees in VA-wide trainee programs under mobility agreements, however, will generally be at government expense);"

The agency did not enter into any agreement with claimant authorizing relocation benefits as it normally would have if relocation expenses had been authorized.

Claimant contends that because he moved from Germany and was in need of the relocation benefits due to the different standard of living and the expense of relocating, he should receive these benefits. Claimant further states that when he applied he had no accurate idea of what the statement "Relocation: NO" meant. He claims that it meant that the VA would not pay for the movement of his household goods and car and he noted this concern on his resume. Claimant further contends that the Federal Travel Regulation authorizes payment of relocation expenses for him.

The record contains nothing regarding the circumstances leading to Mr. Leverette's being hired for his position in Germany and any right he may have had to return travel and relocation upon completion of his tour there.

Discussion

When an employee is transferred from one permanent duty station to another, for the purpose of determining relocation benefits, the transfer must be characterized as being "in the interest of the Government" or "primarily for the convenience or benefit of an employee." Riyoji Funai, GSBICA 15452-RELO, 01-1 BCA ¶ 31,342, at 154,778. If the primary beneficiary is the Government, the employee is entitled to receive (subject to regulatory constraints) certain benefits. Id. These include expenses of transportation of the employee, his family, and his household goods; real estate transaction expenses; and a miscellaneous expense allowance. Id. If the primary beneficiary is the employee, on the other hand, none of these expenses -- not even transportation of persons and property -- may be paid from Government funds. Id. (citing 5 U.S.C. §§ 5724(a)(1), (2), (h); 5724a(a), (c), (d), (f) (1994 & Supp. V 1999)); Ross K. Richardson, GSBICA 15286-RELO, 00-2 BCA ¶ 31,131).

An agency's determination as to the primary beneficiary of a transfer is discretionary, and we will not overturn it unless it is arbitrary, capricious, or clearly erroneous under the facts of the case. Funai (citing Eugene R. Platt, 59 Comp. Gen. 699 (1980), modified on reconsideration, 61 Comp. Gen. 156 (1981)). As we recognized in Earl G. Gongloff, GSBICA 13860-RELO, 97-1 BCA ¶ 28,792, an agency may issue regulations concerning relocation setting forth guidelines as to the specific conditions and factors to be considered in determining whether a transfer is in the interest of the Government and whether relocation expenses will be paid. When the agency has issued such regulations, and has communicated the information in advance and in writing to all applicants, the agency's determination that a transfer is not in the interest of the Government will not be overturned unless the determination is shown to have been arbitrary and capricious or clearly erroneous. Gongloff; Funai; Paul C. Martin, GSBICA 13722-RELO, 98-1 BCA ¶ 29,412 (1996).

Here, the agency reasonably determined that well-qualified candidates existed within the particular geographic area, and it was not required to offer relocation benefits to attract potential jobholders. Cf. Funai, 01-1 BCA at 154,778 (if agency determines well qualified candidates exist within particular geographic area, it is not required to offer relocation benefits). This determination was consistent with the VA's policy that generally it is not considered cost effective to transfer employees at the GS-6 grade level or below at Government expense.

Decision

The claim is denied.

MARY ELLEN COSTER WILLIAMS
Board Judge