

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

September 20, 2002

GSBCA 15804-RELO

In the Matter of JANICE J. DeVILBISS

Janice J. DeVilbiss, Minot, ND, Claimant.

Douglas P. Goetz, Headquarters, 5th Bomb Wing, Department of the Air Force, Minot Air Force Base, ND, appearing for Department of the Air Force.

HYATT, Board Judge.

Claimant, Janice J. DeVilbiss, is a civilian employee of the Air Force who was hired to fill one of two social worker positions in the hospital located on Minot Air Force Base (AFB) in North Dakota. Prior to accepting this position, Ms. DeVilbiss was employed by the Navy in California. Ms. DeVilbiss has sought the Board's review of the Air Force's decision not to pay relocation expenses in connection with her transfer.

Background

When one of the social worker positions at the Minot AFB hospital became vacant, the position was advertised and recruited through Lackland AFB in accordance with Air Force personnel policy. In accordance with Air Force procedures, when the vacancy occurred, Minot AFB sent to Lackland AFB a request for referral of eligible candidates. In this request, Minot AFB stated that it would not pay permanent change of station (PCS) benefits to the person selected for the position. Minot AFB's decision in this regard was based on an assessment of the applicable circumstances relating to filling the vacancy, including budget, anticipated level of difficulty in filling the position, and whether there would be a need for recruitment incentives. Lackland AFB prepared the vacancy announcement, received applications, and referred qualified candidates to Minot AFB. The vacancy announcement for the position stated that: "Travel expenses will not be paid by the Federal government under this announcement unless it has been determined that the position is one that is hard to fill."

After screening the applications and identifying qualified candidates for the position, Lackland AFB prepared the first referral list for the Minot AFB hospital. The list had only

one candidate, who declined the position after it was offered. A second referral list was sent with two candidates, both of whom also declined the position. Subsequently, a third list, containing claimant's name, was sent to Minot AFB. Also during the period when Lackland AFB was recruiting candidates the local civilian personnel office at Minot AFB identified two potential candidates pursuant to the priority placement program. Finally, after the time to apply for the position had expired, there were four potential applicants in the local area who expressed an interest in the social worker position. It took approximately eight months to fill the vacant position.

The social worker position was offered to and accepted by Ms. DeVilbiss. The human resources specialist at Minot AFB contacted Ms. DeVilbiss by telephone and again stated that relocation costs would not be paid for the claimant's move. The human resources specialist has attested that Ms. DeVilbiss acknowledged that she understood this and wanted to accept the position despite that fact that PCS expenses would not be reimbursed.

Subsequently, claimant and her spouse decided to seek reimbursement of her relocation costs. Claimant's principal argument is that the position was in fact hard to fill. She contends that the Air Force should have acknowledged this and recognized her eligibility for reimbursement of relocation expenses. Ms. DeVilbiss has pursued this aspect of her claim administratively through appropriate channels within the Air Force, which has rejected her arguments. She has thus requested the Board's review.

Discussion

In responding to this claim the Air Force makes an initial argument that the Board should dismiss the claim as premature. This is premised on the fact that while Ms. DeVilbiss has sought an administrative determination that she is eligible for PCS benefits, she has never presented a specific monetary claim to the Air Force for its review. We agree that the Board is not in a position to review the specific monetary elements of the claim. Nonetheless, we conclude that the general issue presented -- whether the Air Force has made a proper determination that this position was not "hard to fill" -- has been fully presented to and considered by the Air Force. This issue is properly before us for review.

When an employee is transferred from one permanent duty station to another, the transfer will either be "in the interest of the Government" or "primarily for the convenience or benefit of an employee" for the purpose of determining eligibility for relocation benefits. Jackie Leverette, GSBCA 15614-RELO, 02-1 BCA ¶ 31,825; Riyoji Funai, GSBCA 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, including expenses of transportation of the employee, his family, and his household goods; real estate transaction expenses; and a miscellaneous expense allowance. If the primary beneficiary of the transfer is the employee, on the other hand, none of these expenses -- not even transportation of persons and property -- may be paid from Government funds. Leverette; Funai; see 5 U.S.C. §§ 5724(a)(1), (2), (h); 5724a(a), (c), (d), (f) (2000); Ross K. Richardson, GSBCA 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. Carl A. Wagner, GSBCA 15896-RELO (Aug. 30, 2002); Leverette; Funai; Derek T. Lamirault, GSBCA 13933-RELO, 97-2 BCA ¶ 29,028. This is particularly so when the agency's view on the matter has been communicated in advance and in writing to all applicants. Earl G. Gongloff, GSBCA 13860-RELO, 97-1 BCA ¶ 28,792; Funai; Paul C. Martin, GSBCA 13722-RELO, 98-1 BCA ¶ 29,412 (1996).

The Department of Defense (DoD), in the Joint Travel Regulations (JTR), has published guidelines for DoD components to use in determining whether PCS expenses will be paid in connection with a particular vacancy. JTR C4100. Specifically:

It is the responsibility of each DoD component to make decisions that balance the rights of employees and the prudent use of appropriated funds. For instance, activities may determine that well qualified candidates exist within a particular geographical area and therefore in their recruitment announcements restrict the area of recruitment and/or indicate that PCS allowances are not offered.

JTR C4100-A.2. Additionally:

When a DoD component is preparing to recruit for a vacancy, the appropriate official should make every effort to determine prior to advertising the vacancy whether it is in the interest of the Government to pay PCS allowances so that this information can be provided during the advertisement period. . . . The determination will be based on factors such as cost effectiveness, labor market conditions, and difficulty in filling the vacancy. Budget constraints alone don't justify the denial of PCS allowances. If a decision is made not to pay PCS allowances, the reason for this decision will be documented in writing by the appropriate official and maintained with the official staffing files. All applicants selected for interview must be notified in writing of the organization's decision to pay or not pay PCS allowances. If interviews are not held, the selectee must be informed, in writing, whether PCS allowances will or won't be paid.

JTR C4100-B.3. Here, the Air Force made its determination that PCS benefits would not be paid in advance and communicated this decision to prospective applicants in the vacancy announcement.

We recognize that there have been instances in which agencies have advertised positions as conveying no relocation benefits to the individual selected for the position, but have subsequently, by their actions, effectively redetermined that the transfer was in the interest of the Government, such that benefits should have been paid. See, e.g., George F.

Ringrose, GSBCA 15899-RELO (Aug. 16, 2002); Gregory M. Chaklos, GSBCA 15685-RELO, 02-1 BCA ¶ 31,773; Funai. This, however, is not one of these cases. Although claimant maintains that the extended time frame for filling the vacancy, coupled with three prior rejections of the position by other candidates, shows that the position was hard to fill, the Air Force counters that it nonetheless did not consider the position hard to fill and that local interest had been expressed in the position.¹ Claimant further argues that there is no evidence that the local candidates had the qualifications needed to fill the position. On the other hand, however, neither is there any basis to conclude that there were no local candidates who could meet the qualifications required for the position. Regardless of the disagreement of the parties about this issue, the bottom line is that the Air Force made the determination that the transfer would not be primarily in its interest and steadfastly adhered to that position. The facts of this case simply do not support a finding that the agency's exercise of discretion in making this determination was improper. Like the claimant in Wagner, Ms. DeVilbiss sought and accepted this position with the full understanding that the Air Force considered that the transfer was primarily for the convenience of the applicant and that relocation benefits would not be paid. Air Force personnel never gave her reason to believe that the agency would consider paying relocation benefits to induce her to accept the position.

Accordingly, we conclude that the Air Force properly elected not to extend PCS benefits in connection with its recruitment efforts for this position. The claim is denied.

CATHERINE B. HYATT
Board Judge

¹ In responding to one of claimant's initial administrative grievances, the Air Force explained that the term "hard to fill" is not based on how long it takes to process a referral action nor may the applicant for a vacancy determine how to categorize a particular position. The Air Force considers a position to be "hard to fill" based on the number of qualified applicants. Thus, if the Air Force considered that a vacancy had been properly and adequately marketed to the potential candidate pool, and no applications from qualified candidates had been received, that position would probably be deemed hard to fill. The fact that some candidates may have declined an offer would not necessarily result in a determination that the position was "hard to fill."