

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

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October 3, 2002

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GSBCA 15826-RELO

In the Matter of STEVEN G. LOVEJOY

Steven G. Lovejoy, APO Area Europe, Claimant.

Jeannie A. Davis, Director of Civilian Personnel, Headquarters, United States Army, Europe, and Seventh Army, Office of the Deputy Chief of Staff, Personnel and Installation Management, APO Area Europe, appearing for Department of the Army.

**PARKER**, Board Judge.

Background

In March 2001, while working for the Defense Finance and Accounting Service in San Bernardino, California, Steven G. Lovejoy applied for a job with the Department of the Army in Giessen, Germany. The Army was seeking a GS-6 Voucher Examiner and, because it determined that the position would not be difficult to fill, the Army decided to consider for the position only people from the local area. The job vacancy announcement stated very clearly that "PCS [permanent change of station] cost will NOT be paid."

The resume that was submitted for the job had Mr. Lovejoy's old address on it -- in Schoenau/Heidelberg, Germany -- which was within the area of consideration. And (of course) he was the one selected for the job. When the Army discovered that Mr. Lovejoy actually lived in California, however, it decided to offer the position to Mr. Lovejoy anyway. The Army informed Mr. Lovejoy in writing that PCS costs would not be paid, and Mr. Lovejoy stated in writing that he understood that PCS costs would not be paid. He then accepted the job and moved to Germany.

Mr. Lovejoy's subsequent request that the Army pay PCS costs was denied, although the record indicates that there may be some disagreement between Mr. Lovejoy's local office and Army headquarters as to whether those costs should be authorized. Mr. Lovejoy has appealed the Army's decision to deny PCS costs.

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Discussion

When an employee is transferred from one permanent duty station to another, the transfer usually benefits both the Government and the employee. For the purpose of determining relocation benefits, however, the transfer must be characterized as for the principal advantage of one or the other; it is either "in the interest of the Government" or "primarily for the convenience or benefit of an employee." If the primary beneficiary is the Government, the employee is entitled to receive (subject to regulatory constraints) certain benefits. These include expenses of transportation of the employee, his family, and his household goods; real estate transaction expenses; and a miscellaneous expense allowance. The employee may, at the agency's discretion, receive other benefits, including temporary quarters subsistence expenses. 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. 5 U.S.C. §§ 5724(a)(1), (2), (h); 5724a(a), (c), (d), (f) (2000); Riyoji Funai, GSBCA 15452-RELO, 01-1 BCA ¶ 31,342; Ross K. Richardson, GSBCA 15286-RELO, 00-2 BCA ¶ 31,131.

The selection and transfer of an employee pursuant to a merit promotion program is generally deemed to be an action taken in the interest of the Government. Richardson; Darrell M. Thrasher, GSBCA 13968-RELO, 97-2 BCA ¶ 29,214. The Defense Department's Joint Travel Regulations (JTR) provide for an exception to the general rule, however: an activity may for good cause indicate in advertising a position opening that PCS benefits will not be offered to the individual selected. For example, if an agency determines that well-qualified candidates exist within a particular geographic area, it need not offer PCS benefits to attract potential job-holders. JTR C4100-A.2 (Mar. 1, 2001).

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. Here, although there appears to be some disagreement within the agency, the Army's official position is that Mr. Lovejoy's transfer was primarily for his own benefit. That determination is supported by the Army's judgment that there were qualified candidates in the local area and by the clear statement in the vacancy announcement that PCS costs would not be paid. Because Mr. Lovejoy has given us no reason to conclude that

the Army's determination was arbitrary, capricious, or clearly erroneous, his claim must be denied.

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ROBERT W. PARKER  
Board Judge