

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

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September 30, 2003

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GSBCA 15935-RELO

In the Matter of ROBERT BAILEY

Robert Bailey, Orlando, FL, Claimant.

Daniel J. Lacey, Associate Commissioner for Administration, Bureau of Labor Statistics, Department of Labor, Washington, DC, appearing for Department of Labor.

**DANIELS**, Board Judge (Chairman).

The Department of Labor's Bureau of Labor Statistics (BLS) asks us to reconsider our decision that Robert Bailey is eligible for relocation benefits because the agency's transfer of Mr. Bailey to Orlando, Florida, was in the interest of the Government. See Robert Bailey, GSBCA 15935-RELO, 03-1 BCA ¶ 32,232. According to BLS, "[r]econsideration of this decision is crucial, as the ramification will greatly impact all Federal agencies. It is our contention that this decision will effectively strip federal agencies of their absolute authority to determine when a relocation is beneficial to the Government, and to determine if/when reimbursement of relocation expenses are warranted."

As Mr. Bailey points out in opposition to BLS's request for reconsideration, agencies do not have "absolute authority to determine when a relocation is beneficial to the Government, and to determine if/when reimbursement of relocation expenses are warranted." If Congress had intended that agencies have such authority, it would not have allowed employees to make claims for "relocation expenses incident to transfers of official duty station," and would not have established a mechanism for the review and settlement of those claims. See 31 U.S.C. § 3702(a)(3) (2000). The review and settlement authority now resides in this Board. GSA Order ADM P5450.39C CHGE 78, ch. 12.a(2) (Mar. 21, 2002). The purpose of our consideration of these claims is to ensure that agencies, by following relevant statutes and regulations, treat their personnel fairly when transferring them.

Whether a particular transfer is better characterized as "in the interest of the Government" or "primarily for the convenience or benefit of an employee" is a question of fact. An agency has the discretion to decide, in the first instance, which characterization better applies to a transfer, and that determination is accorded great deference. The agency's exercise of discretion is subject to review, however, and it will be overturned where a

claimant can show that it was arbitrary and capricious or clearly erroneous. See Board decisions cited in original decision in this case; cf. 5 U.S.C. § 706(2)(A) (2000) (similar standard for court review of agency determinations under Administrative Procedure Act).

With specific reference to Mr. Bailey's move to Orlando, BLS contends that it should not have to pay relocation benefits because the agency did not make a formal determination as to the principal beneficiary of the move, the agency did not issue travel orders, and Mr. Bailey has not signed an agreement to remain in Government service for twelve months after his transfer. We do not consider the lack of any of these formalities to be a stumbling block to Mr. Bailey's recovery of relocation benefits. The agency effectively made a determination that the move was in the interest of the Government, rather than primarily for the convenience or benefit of the employee. The agency's contrary announced conclusion, we have found on the basis of the facts presented by the parties, was clearly erroneous. At one time, BLS had refused Mr. Bailey's request to transfer to Orlando; the agency agreed to send him there only after it had decided that it needed to have one of its economists establish a new office in Florida and determined that Orlando was a location in which it had a particular need to have work performed. The lack of travel orders is not an impediment to recovery because relocation benefits are mandated by statute whenever a transfer is in the interest of the Government. Gregory M. Chaklos, GSBCA 15685-RELO, 02-1 BCA ¶ 31,773 (and cases cited therein). As required by statute, Mr. Bailey must agree in writing to remain in Government service before BLS may pay benefits to him. 5 U.S.C. § 5724(i). There is no reason why the employee cannot sign the agreement at any time before payment is made, however. He could, for example, sign the agreement tomorrow and receive the benefits on the following day. The critical point is that he must remain in Government service for the requisite period of time in order to keep his benefits. Regina V. Taylor, GSBCA 13650-RELO, 97-2 BCA ¶ 29,089.

BLS has not persuaded us to modify our original decision in this case. As we held earlier, "Because the transfer of Mr. Bailey from Atlanta to Orlando was primarily in the interest of the Government, BLS is obligated to pay relocation benefits to Mr. Bailey. The agency shall review his voucher in light of applicable regulations and reimburse him for expenses claimed, as appropriate."

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STEPHEN M. DANIELS  
Board Judge