

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

March 25, 2003

GSBCA 16019-RELO

In the Matter of MARK HUCKEL

Mark Huckel, Hobe Sound, FL, Claimant.

David W. Green, Chief, Human Resources Management Service, Department of Veterans Affairs, West Palm Beach, FL, appearing for Department of Veterans Affairs.

PARKER, Board Judge.

Mark Huckel has asked the Board to review the determination of the Department of Veterans Affairs (VA) that Mr. Huckel was not entitled to relocation expenses in connection with his July 2001 transfer from a job with the Department of the Interior to a position with VA in West Palm Beach, Florida. For the reasons discussed below, we hold that the agency's determination was incorrect.

Background

Prior to announcing the vacancy for a utility systems operator in West Palm Beach, VA determined that payment of relocation expenses should not be authorized for the successful applicant. This was because, historically, VA had experienced little difficulty in recruiting qualified local applicants for such positions.

VA's merit promotion announcement issued in connection with the vacancy provided that "PAYMENT OF RELOCATION EXPENSES IS NOT AUTHORIZED." The promotion announcement limited the area of consideration for the position to VA employees nationwide.

VA also issued a "public notice announcement" for the position. The public notice announcement limited the area of consideration to current VA employees and "status eligible applicants." According to VA, status eligible applicants are those who are eligible for reinstatement or transfer from other federal agencies who currently hold or previously held the grade and experience requirements of the position being filled. The public notice announcement did not say anything about relocation expenses.

VA's policy with respect to paying relocation costs begins as follows:

Generally, when an employee is selected pursuant to a merit promotion plan for transfer to a position at a higher grade or to a position with known promotion potential, the transfer is considered to be for the benefit of the Government for the purpose of paying relocation expenses However, all of the factors surrounding any particular merit promotion recruitment action may lead the approving official to the determination that any resulting transfer is not primarily in the interest of the Government for the purpose of paying relocation expenses.

VA Handbook 5005, pt. III, ch. 2, ¶ 14(a). With respect to the payment of relocation costs for status eligible employees, paragraph 14(c) the Handbook provides:

Payment of relocation expenses is not generally considered appropriate in the following situations, unless there is a specific determination by the duly designated official that such a transfer is primarily in the best interest of the Government:

. . . .

(b) Transfer eligibles from outside the agency even though applications are rated and ranked under agency promotion procedures, since the VA promotion program applies to VA employees only[.]

The VA Handbook also requires, however, that:

A decision that relocation expenses will or will not be paid in connection with filling a position under a merit promotion plan must be clearly communicated in advance to all prospective applicants by a statement on the vacancy announcement.

Id. ¶ 14(b).

Mr. Huckel, then an employee of the Department of the Interior, was selected for the position under the public notice announcement as a status eligible applicant. He accepted the job, which was a promotion for him, and moved to West Palm Beach. There is nothing in the record to indicate that VA informed Mr. Huckel, either orally or in writing, that his relocation costs would not be paid. When his request for payment of relocation expenses was denied by VA, Mr. Huckel requested that the Board review the decision.

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, GSBCE 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, GSBCA 15286-RELO, 00-2 BCA ¶ 31,131).

It is well-settled that 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. Funai. However, as we recognized in Earl G. Gongloff, GSBCA 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, a promotion-related transfer is deemed to be in the interest of the Government unless the agency does two things: (1) it must apply the guidelines to determine whether a promotion-related transfer would primarily benefit the employee rather than the Government and, (2) if the determination is that the transfer would not primarily benefit the Government such that relocation costs will not be paid, it must communicate the information in advance and in writing to all applicants. Gregory M. Chaklos, GSBCA 15685-RELO, 02-1 BCA ¶ 31,773; Richardson. If the agency does these two things, the determination that a promotion-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. Funai; Paul C. Martin, GSBCA 13722-RELO, 98-1 BCA ¶ 29,412 (1996); Gongloff.

Here, VA failed to complete the process for determining that relocation costs should not be paid because it failed to communicate in the public notice announcement its intention not to do so. We recognize that VA had good reasons for deciding that payment of relocation costs would not be in the agency's interest, and we do not take lightly the agency's judgment in this regard. At the same time, however, the longstanding rule requiring publication of such decisions obviously was intended to protect employees who need all information relevant to the important decision of whether to accept a transfer to a new duty station. The Comptroller General explained, more than twenty years ago, why the notice requirement is an integral part of the determination process:

Additionally, any regulation issued in accordance with the guidance given above should require that such information be clearly communicated in advance and in writing to all applicants, preferably by a statement on the vacancy announcement. If this is done, each person who applies will do so with an understanding of the conditions under which relocation expenses will or will not be paid, and acceptance of an offer would be tantamount to accepting a condition of employment which the person could not successfully contest unless it was shown to be arbitrary or capricious, or contrary to the decisions of this office.

Eugene R. Platt, 61 Comp. Gen. 156 (1981).

Here, Mr. Huckel moved to Palm Beach under the reasonable impression that his relocation costs would be paid. When he arrived, he was told that the costs would not be paid. This is precisely the unfair situation that the notice requirement seeks to avoid. The agency is directed to pay Mr. Huckel's relocation costs.

ROBERT W. PARKER
Board Judge