

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

December 15, 2003

GSBCA 16303-RELO

In the Matter of THELMA H. HARRIS

Thelma H. Harris, Atlanta, GA, Claimant.

Lori R. Larson and Randall J. Hall, Public Contract & Technology Law Branch, Office of the Chief Counsel, Internal Revenue Service, Washington, DC, appearing for Department of the Treasury.

DANIELS, Board Judge (Chairman).

Thelma H. Harris is an employee of the Internal Revenue Service (IRS), a bureau of the Department of the Treasury. She transferred from the Washington, D.C., area to Atlanta, Georgia, in August 2002. IRS authorized her to receive relocation benefits in conjunction with the move and actually paid those benefits to the extent she asked it to do so. Later, however, Treasury demanded that she return the money, asserting that as a matter of law, the payments were impermissible because the transfer was primarily for her convenience rather than in the interest of the Government. The department subsequently denied her request that it waive its demand for repayment. Ms. Harris has asked us to reverse the department's determinations.

Ms. Harris' request is, technically, that we set aside on appeal Treasury's decision not to waive its right to repayment of what the department believes was an erroneous overpayment of relocation benefits. The decision to waive the right to repayment is vested by Congress in the heads of agencies, and the Board has no power to review any such decision. 5 U.S.C. § 5584 (2000). Nevertheless, because the claimant has expressed a clear disagreement with the fundamental basis for Treasury's insistence on repayment – the conclusion that providing the benefits was impermissible as a matter of law – and we do have the authority to settle relocation expense claims of or against the Government, 31 U.S.C. § 3702(a)(3), we will consider the merits of the dispute. Marlene J. Walters, GSBCA 15875-RELO, 03-1 BCA ¶ 32,124 (2002); Gary Morris, GSBCA 15290-RELO, 00-2 BCA ¶ 31,132.

Background

At some time in early 2002, Ms. Harris informed her supervisor that she intended to resign her position with IRS and accompany her husband to Atlanta, where he had accepted a job. The supervisor considered Ms. Harris a valuable employee. He asked her to prepare a proposal for the relocation of her position to Atlanta. After reviewing the proposal, to keep her in her position, he offered to relocate her. Ms. Harris accepted the offer.

On March 20, the deputy chief of IRS agency-wide shared services signed a form entitled "Authorization For Moving Expenses" which included these paragraphs:

Change in Post of Duty from Silver Spring[], Maryland to Atlanta, Georgia in the interest of the Government and not primarily for the employee's convenience or benefit or at own request.

Employee Named Above Qualifies for Travel, Transportation, Real Estate Transactions, Relocation Income Tax Allowance, and/or Other Expenses As Indicated Above and Such Are Authorized in Accordance With Regulations Of The General Services Administration, As Implemented By The Department of Treasury and The Internal Revenue Service.

In October 2002, after Ms. Harris moved to Atlanta, she requested and received more than \$8000 in relocation benefits, primarily to cover the cost of shipping her household goods.

In September 2003, Treasury's deputy chief financial officer wrote to Ms. Harris a memorandum which demanded repayment of the benefits. The basis for the demand is:

[T]he OGC [Office of General Counsel] . . . concluded that the chain of events was initiated by you when you informed your manager that you were relocating to Atlanta for personal reasons and would resign. Events concerning your relocation after that point made your relocation one based on convenience and not one that was in the best interest of the Government. The OGC finds that reimbursement of moving expenses to you was erroneous as a matter of law.

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 whether the employee may receive 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 certain benefits (subject to regulatory constraints). If the primary beneficiary is the employee, on the other hand, none of these expenses may be paid from Government funds. Robert Bailey, GSBCA 15935-RELO, 03-1 BCA ¶ 32,232, reconsideration denied (Sept. 30, 2003) (citing 5 U.S.C. §§ 5724(a)(1), (2), (h); 5724a(a), (c), (d), (f)); Riyoji Funai, GSBCA 15452-RELO, 01-1 BCA ¶ 31,342.

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. Bailey; Bart J. Dubinsky, GSBCA 14546-RELO, 98-2 BCA ¶ 29,840; Earl G. Gongloff, GSBCA 13860-RELO, 97-1 BCA ¶ 28,792.

The Treasury Department maintains that IRS's determination that Ms. Harris's transfer was in the interest of the Government was clearly erroneous and therefore must be overturned. We see no basis for this position. Ms. Harris did not ask that IRS reassign her to Atlanta; the proposal to send her there was developed at the request of her supervisor, and the offer to relocate her was made by him for the express purpose of keeping a valuable employee. These facts support a conclusion that IRS's determination was reasonable. It is conceivable that IRS might reasonably have considered, given Ms. Harris's interest in preserving her position notwithstanding her need to move to Atlanta, and her involvement in drafting the proposal to send her to that city, that the relocation was primarily for her convenience or benefit. The agency did not make that determination, however, prior to the move. That the agency could have chosen a different sensible course does not mean that the choice made was irrational. The determination was not erroneous as a matter of law.

Once an agency has authorized travel or relocation allowances which it had the discretion to grant, and the employee incurs expenses in reliance on the authorization, the agency must reimburse the employee for those expenses. Linda M. Conaway, GSBCA 15342-TRAV, 00-2 BCA ¶ 31,133; Elizabeth A. Hair, GSBCA 14285-RELO, 98-2 BCA ¶ 29,914; Dubinsky. Demanding repayment from Ms. Harris of the expenses she incurred in reliance on her reasonably-based authorization to transfer in the interest of the Government would be unfair and is improper.

The IRS resists this conclusion by citing the principle that an agency can retroactively amend travel orders to correct an error or to include a provision that was definitely intended to be included. See Carl A. Wagner, GSBCA 15896-RELO, 02-2 BCA ¶ 32,038; Alice P. Pfefferkorn, GSBCA 14124-TRAV, 97-2 BCA ¶ 29,313. The facts pertinent to Ms. Harris's move were well known to IRS before it decided that the move was primarily in the interest of the Government, however, and there is no indication that the authorization was given by mistake, so this principle does not help the agency here.

Decision

The Department of the Treasury may not collect from Ms. Harris any of the relocation benefits it has properly paid to her.

STEPHEN M. DANIELS
Board Judge