

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

May 25, 2004

GSBCA 16345-RELO

In the Matter of SHERWOOD McINTYRE

Sherwood McIntyre, Edmond, OK, Claimant.

Linda E. Mahoney, Branch Chief, Travel and Relocation Services, Administrative and Financial Management, Agricultural Research Service, Beltsville, MD, appearing for Department of Agriculture.

HYATT, Board Judge.

Under applicable regulations, absent a strong justification for not doing so, an agency should generally authorize relocation benefits when an employee is transferred, in the interest of the Government, to a new permanent duty station that is more than fifty miles distant from the old duty station. When the duty stations are more than fifty miles apart, but the employee's home is located at an intermediate point between the two stations, it is reasonable, in assessing whether benefits should be authorized, for the agency to take into account the extent to which the employee's commute is affected by the transfer.

Background

In October 2003, Dr. Sherwood McIntyre, an employee of the Department of Agriculture's Agricultural Research Service, was transferred, at the request of his supervisor, from his permanent duty station at Langston University in Langston, Oklahoma, to the Grazinglands Research Laboratory in El Reno, Oklahoma. Dr. McIntyre's current residence, and his residence when he was stationed in Langston, is in Edmond, Oklahoma, which both the agency and the claimant agree is twenty-eight miles from the old duty station, and,

according to the agency, thirty-four miles from his new duty station in El Reno. The commute to Langston from Edmond takes about thirty-five minutes. Claimant and the agency disagree about the time required to commute from Edmond to the Grazinglands Research Laboratory.

Dr. McIntyre contends that the agency should authorize relocation benefits in connection with this transfer. The agency maintains that it is not required to pay claimant any relocation benefits, because the increase in Dr. McIntyre's commute, by its calculation, is only six miles.

Dr. McIntyre has provided a detailed explanation of why he believes that this transfer should include the customary relocation benefits. He notes that the agency used internet mapping services, namely Mapquest and Rand McNally, to derive approximate distances between towns -- rather than exact locations -- to compare his old and new commutes. He points out that the shortest and most direct route from his actual address to the new location is forty-two miles and requires nearly eighty minutes of driving time because it uses primarily local streets with residential speed limits.¹ Alternative commutes that he describes also involve longer mileages, tolls, and take at least one hour each way.

Discussion

The starting point for the analysis of whether relocation benefits are available in connection with this permanent change of station, which was accomplished in the interest of the Government, is the pertinent regulation's definition of an official duty station and the distance between the two official duty stations. Under the Federal Travel Regulation (FTR) in effect when the subject transfer took place, the geographic limits of an employee's "official station" are defined to be

- (1) The corporate limits of the city or town where stationed or if not in an incorporated city or town;
- (2) The reservation, station, or other established area . . . having definite boundaries where the employee is stationed.

¹ The Board, using claimant's home address on Mapquest, determined that there is a forty-two mile route that uses mostly major highways, including a toll road, to get from claimant's home in Edmond to the laboratory on West Cheyenne Street in El Reno. Mapquest estimates the travel time to be 48 minutes.

41 CFR 300-3.1 (2003). Here, the town of Langston, Oklahoma, is northeast of Oklahoma City, while the city of El Reno is west of Oklahoma City. Using the Rand McNally website's mapping service, the shortest driveable distance between these two duty stations is some sixty-two miles.

The relevant provisions of the FTR are contained in 41 CFR 302-1.1(b) and 302-2.6. Section 302-1.1(b) defines who will be eligible to receive relocation expense allowances under the FTR and states that "an employee transferring in the interest of the Government from one agency or duty station to another for permanent duty" will "generally [be] eligible for relocation expenses allowances" providing that the "new duty station is at least 50 miles distant from [the] old duty station." Section 302-2.6 provides that relocation expenses will generally not be reimbursed when the distance between the two duty stations is less than fifty miles. This section sets forth guidelines for the exercise of the agency's discretion to authorize relocations benefits when the two duty stations are less than fifty miles apart:

On a case-by-case basis and having considered the following criteria, the head of [the] agency or designee may authorize reimbursement of relocation expenses of less than 50 miles when he/she determines that it is in the interest of the Government; and

(a) The one way commuting pattern between the old and new official station increases by at least 10 miles but no more than 50 miles; or

(b) There is an increase in the commuting time to the new official station; or

(c) A financial hardship is imposed due to increased commuting costs.

41 CFR 302-2.6.

Although the regulation suggests that if the relocation is in the interest of the Government, and the two duty stations are located more than fifty miles apart, relocation expenses are ordinarily to be authorized, it does not require that the expenses be authorized in every situation. In most cases, the impact on the employee's commuting pattern would only be considered when the distance between duty stations is less than fifty miles. Here, however, the two stations are more than fifty miles apart, but the employee's home is located between the two duty stations.

FTR section 302-1.1(b) does not articulate when it would be appropriate for the agency to decline to authorize relocation benefits when the distance between duty stations exceeds fifty miles. In the circumstances presented here, it is appropriate for the agency to consider whether the transfer has a substantial adverse impact on the employee's commute before authorizing relocation expenses. The Board has recognized, in a variety of contexts, that when the regulations vest discretion in the agency with respect to the authorization of particular relocation expenses, the agency's judgment will not be disturbed unless the determination is arbitrary, capricious, or clearly erroneous. See, e.g., Jeffrey R. Jenkins, GSBCA 15339-RELO, 00-2 BCA ¶ 31,066; Larry E. Olinger, GSBCA 14566-RELO, 98-2 BCA ¶ 29,877. Because the regulation provides that the benefits are "generally" to be authorized in Dr. McIntyre's situation, however, the agency should not deny them unless it has a strong justification to do so.

Having said this, we note that the available information in this situation is conflicting and that it does not appear that the agency has considered all of the criteria established in FTR 302-2.6(b). Dr. McIntyre has argued that his commute to the new duty station is considerably more burdensome than the commute to the old duty station -- his route has increased in distance, takes longer to complete, and is more costly because of tolls. The agency, reviewing this request from outside the Oklahoma City area, has relied on website information to evaluate the impact on Dr. McIntyre's commute and to determine that the impact is minimal in terms of actual mileage. It is possible, as Dr. McIntyre suggests, that the results of these mapping programs are misleading in his particular case. The agency report is silent with respect to claimant's assertion that his commute to El Reno entails significant additional time and expense than did the commute to Langston. It may be beneficial to the agency, in reconsidering this claim and exercising its discretion in this matter, to confer with other agency employees located in the Oklahoma City area to verify the nature of the commute faced by Dr. McIntyre.

CATHERINE B. HYATT
Board Judge