

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

October 5, 2005

GSBCA 16725-RELO

In the Matter of TIMOTHY A. BURGESS

Timothy A. Burgess, Richfield, MN, Claimant.

Andrew Stewart, Office of the Staff Judge Advocate, United States Army Reserve Command, Department of the Army, Fort McPherson, GA, appearing for Department of the Army.

DeGRAFF, Board Judge.

A statement made in a vacancy announcement does not provide an agency with the authority to make permanent change of station benefits available to an employee whose transfer is not in the Government's interest.

Background

In 2005, the Department of the Army issued a vacancy announcement for a position in Minnesota. In the announcement, the Army said it would pay the permanent change of station expenses of the person selected to fill the position. Timothy A. Burgess, an Army employee in California, applied to fill the vacancy.

When the Army offered the position to Mr. Burgess, a personnel office employee telephoned Mr. Burgess and told him the Army would not reimburse his permanent change of station expenses because he was transferring to a position with a lower grade than the position he held in California. Mr. Burgess accepted the offer, transferred, and submitted a claim for the expenses he incurred in connection with his transfer. When the Army did not pay his claim, Mr. Burgess asked for our review.

Discussion

By statute, a federal employee who transfers in the interest of the Government from one permanent duty station to another is entitled to payment of certain relocation expenses. An employee who transfers primarily for his or her own convenience or benefit is not eligible for the payment of such expenses. 5 U.S.C. §§ 5724(a), 5724a (2000). Ordinarily, when an employee responds to a vacancy announcement and is selected for a position which results in a promotion, the transfer is presumed to be in the interest of the Government. However, when an employee applies for a position at the same grade with no promotion potential or for a transfer to a lower-graded position, the transfer is not presumed to be in the interest of the Government. This is true even if the employee is selected for the position after responding to a vacancy announcement. See *Paul C. Martin*, GSBCA 13722-RELO, 98-1 BCA ¶ 29,412 (1996) (citing cases).

The Army adopted a written policy which is consistent with these general rules. The policy says permanent change of station benefits are payable only in the case of merit promotions. Because Mr. Burgess applied for and accepted a transfer to a position with a lower grade than the one he held at the time of the transfer, the Army determined his transfer was not in the interest of the Government and, therefore, determined he was not eligible for permanent change of station benefits.

Mr. Burgess says the Army should reimburse his expenses because the vacancy announcement said permanent change of station expense would be paid, and also because the Army did not notify him in writing that such expenses would not be paid. As we decided in *Armando G. Solis*, GSBCA 15713-RELO, 02-2 BCA ¶ 31,870, a vacancy announcement cannot create entitlement to a benefit not authorized by statute. Even though a vacancy announcement says benefits will be paid, this does not authorize an agency to pay benefits to someone whose transfer is not in the interest of the Government because such a payment would be contrary to statute, and payments from the federal treasury can be made only as authorized by law. As for the lack of a written notice, even if the Army should have notified Mr. Burgess in writing that he would not be reimbursed for his expenses, he knew of the Army's decision when he accepted the position and was not prejudiced by the lack of a written notice.

Federal agencies have substantial discretion to determine whether a particular transfer is in the interest of the Government, and we will not overturn an agency's exercise of its discretion unless we are convinced the determination was arbitrary, capricious, or clearly erroneous. *Solis*. The Army's decision in Mr. Burgess's case was consistent with its written policy and the general rules regarding transfers to lower-graded positions. In addition, we found nothing in the record which would support a determination that Mr. Burgess's transfer

was in the Government's interest. We conclude the Army exercised its discretion appropriately.

We deny the claim.

MARTHA H. DeGRAFF
Board Judge