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

February 23, 2001

GSBCA 15452-RELO

In the Matter of RIYOJI FUNAI

Riyoji Funai, Bel Air, MD, Claimant.

Thomas A. Golden, Deputy Director for Finance, Defense Finance and Accounting Service - Rock Island Operating Location, Rock Island, IL; and Ray E. York, Chief, Travel Systems Division, Defense Finance and Accounting Service - Indianapolis Center, Indianapolis, IN, appearing for Department of Defense.

DANIELS, Board Judge (Chairman).

Mr. Riyoji Funai, an employee of the Department of the Army, transferred from a duty station in California to one in Korea in 1988. In July 2000, he transferred back to the United States, this time to Aberdeen Proving Ground in Maryland. The Army paid for Mr. Funai and his family, and their household goods, to move to Maryland. It denied him, however, benefits often associated with a permanent change of station (PCS), such as temporary quarters subsistence expenses (TQSE), a miscellaneous expense allowance, and real estate transaction expenses. The employee maintains that he is entitled to these benefits.

Background

The announcement of the opening for the position which Mr. Funai accepted states very clearly, "Permanent change of station (PCS) funds will not be authorized." After Mr. Funai accepted the offer of the position, however, the Aberdeen Proving Ground personnel office asked him for information necessary to complete orders under which the Army would pay for the family's move to Maryland. That office then told him, though, consistent with the statement in the job announcement, that PCS orders would not be issued.

Shortly thereafter, the command which employed Mr. Funai in Korea issued orders for relocation at Government expense. It did so without receiving authorization from Aberdeen (indeed, without even contacting that facility). The orders authorized not only transportation for the employee, his family, and his household goods, but also sixty days of TQSE, a miscellaneous expense allowance, and a relocation income tax allowance.

Mr. Funai furnished a copy of those orders to the Aberdeen personnel office. Aberdeen did not rescind or revise the orders, or even comment on them in any way.

Two months after receiving the orders, Mr. Funai and his family moved from Korea to Maryland. The new job constituted a promotion for the employee. Mr. Funai says that he would not have taken the position in Maryland if the orders under which he transferred had not been issued.

After Mr. Funai arrived at Aberdeen, his supervisors approved his requests for reimbursement of TQSE and a miscellaneous expense allowance. The Proving Ground refused to make payment, however, because the employee's travel orders did not include an accounting citation for that facility.

The Department of Defense's Joint Travel Regulations (JTR) provide, with regard to PCS movement of employees:

> When an employee transfers from an OCONUS [outside the continental United States] activity to a CONUS [continental United States] activity, the losing OCONUS activity must pay the necessary movement costs (transportation of the employee and dependents, including per diem, and transportation of the employee's HHG/POV [household goods/privately owned vehicle] to the CONUS activity). The gaining activity must pay the costs for TQSE, miscellaneous expense allowance, and, if appropriate, real estate transaction reimbursements for an:
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> (a) employee who completes the prescribed tour of duty under the current agreement . . . .

JTR C1052-B.2.b(4) (June 1, 2000).

The Defense Finance and Accounting Service (DFAS), relying on this provision, allowed payment of the transportation costs because the losing OCONUS activity, the command in Korea, had authorized them. DFAS refused to allow payment of TQSE and the miscellaneous expense allowance, however, because the gaining CONUS activity, Aberdeen Proving Ground, had not authorized those costs.

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 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 (subject to regulatory constraints) certain benefits. These include expenses of transportation of the employee, his family, and his household goods; real estate transaction expenses; and a miscellaneous expense allowance. The employee may at the agency's discretion receive other benefits, including TQSE. 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. 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.

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. Richardson; Darrell M. Thrasher, GSBCA 13968-RELO, 97-2 BCA ¶ 29,214. The Defense Department's JTR provide for an exception to the general rule, however: an activity may for good cause indicate in advertising a position opening that PCS benefits will not be offered to the individual selected. For example, if an agency determines that well-qualified candidates exist within a particular geographic area, it need not offer PCS benefits to attract potential job-holders. JTR ¶ C4100-A.2 (Dec. 1, 1999).

Aberdeen Proving Ground advertised the position in question as one for which PCS benefits would not be provided. We do not know why it inserted this condition in the vacancy announcement, but it did do so. An agency's determination as to the primary beneficiary of a transfer is discretionary, and we will not overturn it unless it is arbitrary, capricious, or clearly erroneous under the facts of the case. Eugene R. Platt, 59 Comp. Gen. 699 (1980), modified on reconsideration, 61 Comp. Gen. 156 (1981). Mr. Funai has not suggested that this determination was faulty. Thus, we conclude that Aberdeen had good cause for not offering the benefits. The employee should have understood this condition of the job when he made his acceptance, since the condition was noted clearly in the job announcement. If the Army had not issued the orders it did, and had held to the stance it originally took, we would find that Mr. Funai's transfer to Maryland was primarily for the benefit of the employee and that payment of the benefits would not be permissible.

From the time Mr. Funai accepted the position, however, the Army's actions have betrayed its initial intent. The Aberdeen personnel office inquired about information necessary to complete orders under which the employee would be transferred at Government expense. The command in Korea prepared orders which authorized payment of many expenses that are available only to employees who are transferred in the interest of the Government. Aberdeen had those orders well before Mr. Funai left Korea and never objected to their terms -- not even to the authorization of some payments (TQSE and a miscellaneous expense allowance) which the Proving Ground would have to make. Even after Mr. Funai arrived in Maryland, Aberdeen's only reason for refusing to make payment for the expenses it would have to fund was the lack of an accounting citation on the orders. And recently, in opposing the claim, DFAS has (a) justified the Army's actions by relying on a provision of the JTR which applies only to employees who are transferred in the interest of the Government and (b) approved payment of some expenses (transportation) which are available only to those employees.

In light of this history, we conclude that the Army has treated this transfer as one in the interest of the Government, rather than as one primarily for the benefit of the employee. We consider reasonable Mr. Funai's understanding, before he left Korea, that because one activity which would have to pay some relocation benefits had issued orders, and the other activity which would have to pay other such benefits had raised no objection to them, the transfer would be at Government expense. We do not consider reasonable any suggestion that an employee who is about to be transferred should recognize from the absence of an

accounting citation that his orders are incomplete. Instead, we direct the gaining activity (Aberdeen) to amend the orders to insert the appropriate citation.

Mr. Funai should be paid the miscellaneous expense allowance (to which he is entitled as an employee transferred in the interest of the Government) and sixty days of TQSE (to which is entitled because those payments were authorized by the agency). He should also be paid real estate transaction expenses for the sale of the home in which he resided in California prior to his transfer to Korea and the purchase of the home in which he now lives in Maryland. All these items should be paid subject to the regulatory constraints applicable to them.

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STEPHEN M. DANIELS
Board Judge