

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

April 12, 2002

GSBCA 15713-RELO

In the Matter of ARMANDO G. SOLIS

Armando G. Solis, APO Area Europe, Claimant.

Laura Smith, Assistant District Counsel, United States Army Corps of Engineers, Department of the Army, Europe District, APO Area Europe, appearing for Department of the Army.

NEILL, Board Judge.

Claimant, Mr. Armando Solis, is a civilian employee of the United States Army Corps of Engineers (the Corps). His current post of duty station is Wiesbaden, Germany. In the fall of 2001, he applied for and was offered a position with the Corps at Incirlik Air Base in Turkey. The job opportunity announcement to which he replied stated that permanent change of station (PCS) benefits "will be authorized." When Mr. Solis was offered the position, however, the offer stated that PCS costs were not included. Despite Mr. Solis' claim that he is entitled to payment of PCS costs, the agency refuses to authorize a PCS allowance for him. He asks that we review this decision. We affirm the agency's determination. The Corps has acted in accordance with applicable statute and regulation.

Background

Claimant is currently employed at the GS-13 level as a civil engineer with the Corps in Germany. He has been stationed there for several years. In early January 2000, he was advised by his agency that, in accordance with the Department of Defense (DoD) policy limiting overseas tours, he would not receive any additional tour extensions beyond early 2002. He was offered, however, an opportunity to register with DoD's priority placement program (PPP). Under this program he would be given a hiring preference for any open DoD position relevant to his skills in the region of the United States for which he might register. He registered with the PPP on October 3, 2001.

In early September 2001, the construction division of the Corps' Europe District issued a job opportunity announcement. The duty station for the vacancy to be filled was Incirlik Air Base in Turkey. The grade level was no higher than GS-13. The job

opportunity notice was not limited to the local commuting area; it specifically stated: "PCS will be authorized." Mr. Solis responded to the announcement.

In late November 2001, claimant was advised by e-mail that he had been selected for the position at Incirlik. The message offering him the position, however, stated: "This offer does not include PCS costs." Mr. Solis promptly replied that he accepted the position but was seeking clarification regarding the absence of any PCS allowance. He pointed out that the original announcement had stated that PCS costs were included. He advised that if the agency was now refusing to pay these costs, he was protesting the action.

In replying to Mr. Solis' message, the agency freely admitted that the original announcement had stated that a PCS allowance would be authorized. Nevertheless, the agency contended that, under applicable regulation, the determination of whether PCS allowances would be provided could, in certain cases, be made after applicants have been referred to the selecting official. In such instances, the determination not to offer a PCS allowance is to be made based on various factors such as cost effectiveness, labor market conditions, and difficulty in filling the vacancy.

In Mr. Solis' case, the agency found one particularly significant factor which precluded authorization of a PCS allowance. The agency recognized that Mr. Solis was no longer eligible for a tour extension and was already registered in the PPP. Since he had less than twelve months remaining on his current tour, the agency concluded that he would not be in a position to sign a valid transportation agreement. Without such an agreement, a PCS allowance could not be authorized. It is this decision of the agency which Mr. Solis asks us to review.

Discussion

Mr. Solis does not dispute the agency's contention that his period of service in Turkey would have been for less than twelve months. Instead, he believes that, regardless of the brevity of his tour in Turkey, he is entitled to payment of PCS expenses because the job vacancy announcement advised applicants that these expenses would be paid.

The agency's reluctance to authorize these expenses in this case is readily understandable. Under both the Federal Travel Regulation (FTR) and the Department of Defense (DoD) Joint Travel Regulations (JTR), which implement and supplement the FTR for DoD civilian employees such as Mr. Solis, a transportation or service agreement is a necessary prerequisite for the authorization of any relocation benefits for a transferred employee. 41 CFR 302-1.5(b) (2001) (FTR 302-1.5(b)); JTR C4001-A. These same regulations also provide that, in the case of appointment or transfer to a post of duty outside the continental United States, the employee is to agree to complete a prescribed tour of duty at the new post as consideration for return travel benefits. *Id.* The FTR provides that the tour of duty shall be for a minimum period of not less than one nor more than three years as prescribed in advance by the head of the agency. FTR 302-1.5(b)(2)(i).

The DoD has determined that, for its employees, the normal tour of duty for a post in Turkey is two years.¹ JTR app. Q, subpara. A. Obviously, Mr. Solis was not in a position to sign a service agreement with a provision such as this. Yet, in the absence of a signed agreement, the agency was clearly not in a position to authorize a PCS allowance for Mr. Solis' move from Germany to Turkey.

Furthermore, even if such an authorization were possible, this would only have led to an additional problem for Mr. Solis when the time arrived for his departure from Turkey for the United States. His departure would inevitably have been within twelve months of his arriving at his new post of duty. The JTR, however, provide that it is neither cost-effective nor efficient to provide more than one PCS move to an employee during any twelve-month period within the DoD. JTR C4100-C.

Under these circumstances, one wonders how the transfer Mr. Solis sought could have been in either his or the Government's best interest. From the record before us, however, it is clear that the agency ultimately concluded that his transfer would not be in the Government's best interest.

By law, when an agency transfers an employee "in the interest of the Government from one official station . . . to another for permanent duty," it must pay various expenses which are incurred in the move. 5 U.S.C. §§ 5724, 5724a (2000). "When the transfer is made primarily for the convenience or benefit of an employee, . . . or at his request," however, such expenses "may not be allowed or paid from Government funds." Id. § 5724(h). Accordingly, once it had determined that this transfer would not be in the Government's interest, the agency, although still offering the position to Mr. Solis, nevertheless made it clear to him in its e-mail message that PCS costs would not be paid.

In justifying its late decision not to authorize a PCS allowance for Mr. Solis, the agency relies on a JTR provision which reads, in part, as follows:

When a DoD component is preparing to recruit for a vacancy, the appropriate official should make every effort to determine prior to advertising the vacancy whether it is in the interest of the Government to pay PCS allowances so this information can be provided during the advertisement period. However, the determination regarding payment or nonpayment of PCS allowances may also be made after applicants have been referred to the selecting official. The determination will be based on factors such as cost effectiveness, labor market conditions, and the difficulty in filing the vacancy.

JTR C4100-B.3. The same provision goes on to state that, if the decision is made at this late juncture not to provide a PCS allowance, the selectee must be informed of this fact in writing.

¹ The JTR notes one exception to the two-year tour of duty for Turkey. The tour of duty for Sinop, Turkey, is limited to one year. JTR app. Q, subpara. C.

Given the circumstances of this case, we find that the agency's reliance on this provision of the JTR was well placed and that the agency acted in compliance with it. It is well settled that the authority to determine whether a transfer is in the interest of the Government rests primarily with the employing agency. John A. Monsen, GSBCA 14595-RELO, 98-2 BCA ¶ 30,043; Bart J. Dubinsky, GSBCA 14456-RELO, 98-2 BCA ¶ 29,840; Gerard R. Sladek, GSBCA 14125-TRAV, 98-1 BCA ¶ 29,403. We will not overturn an agency's exercise of this discretion unless we are convinced that the determination was arbitrary, capricious, or clearly erroneous. Earl G. Gongloff, GSBCA 13860-RELO, 97-1 BCA ¶ 28,792; Paul C. Martin, GSBCA 13722-RELO, 98-1 BCA ¶ 29,412 (1996). In this case, we find that the decision ultimately made by the Corps was both reasonable and responsible. We, therefore, will not disturb it. The claim for PCS allowance is denied.

EDWIN B. NEILL
Board Judge