

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

August 30, 2002

GSBCA 15896-RELO

In the Matter of CARL A. WAGNER

Carl A. Wagner, Louisville, KY, Claimant.

Randy W. Loomis, Acting Medical Center Director, Department of Veterans Affairs Medical Center, Louisville, KY, appearing for Department of Veterans Affairs.

DANIELS, Board Judge (Chairman).

If the transfer of an employee from one permanent duty station to another is "in the interest of the Government," the employee is entitled to receive certain relocation benefits and may at the agency's discretion receive others. If, on the other hand, the transfer is "primarily for the convenience or benefit of an employee," none of these expenses may be paid from Government funds. 5 U.S.C. §§ 5724(a)(1), (2), (h); 5724a(a), (c), (d), (f) (2000); Riyoji Funai, GSBCA 15452-RELO, 01-1 BCA ¶ 31,342; Ross K. Richardson, GSBCA 15286-RELO, 00-2 BCA ¶ 31,131. This case involves a request that a transfer be reclassified to "in the interest of the Government" so that the employee may be paid relocation benefits. The facts of the case do not constitute good cause for making the requested reclassification.

Background

Carl A. Wagner, an employee of the Department of Veterans Affairs (DVA), left a position at his agency's Asheville, North Carolina, medical center in January 2000 to accept a position at the agency's Louisville, Kentucky, medical center. The announcement of the job in Kentucky stated that relocation benefits would not be paid to the individual selected. Prior to the move, Mr. Wagner showed that he recognized this condition of the transfer by signing the following statement: "I am fully aware of and understand the decision that my transfer is primarily for my convenience or benefit or at my request and is not in the interest of the Government (VA). I further understand and agree that all travel, transportation and other expenses incident to this move will be at my own personal expense."

A year after moving to Louisville, Mr. Wagner, having realized that the cost of the move "was more than I anticipated and is causing a considerable hardship on my family,"

asked that the agency authorize payment to him of relocation benefits. The Louisville medical center's acting director agreed, issuing permanent duty travel orders which included the statement, "Transfer for convenience of the Government and not for employee's convenience or at his/her request." Mr. Wagner then submitted a voucher for reimbursement of various expenses which were included in the authorization. The DVA's Financial Services Center refused to make payment, telling the employee:

Your PCS travel claim . . . is being returned . . . unprocessed.

When a vacancy announcement clearly states that relocation expenses will not be paid that fact cannot be retroactively changed.

An agency can retroactively amend travel orders when facts and circumstances clearly demonstrate that some provision previously determined and definitely intended has been omitted through error or inadvertence. All supporting documents for this claim indicate that there was no omission or error made.

The Financial Services Center cited in support of its position several decisions of this Board and the Comptroller General, our predecessor in settling federal civilian employee travel and relocation expense claims.

The acting director of the Louisville medical center supports Mr. Wagner's position that he should be paid the recently-authorized benefits. He writes, "I have carefully reviewed this claim and feel that Mr. Wagner moved for the benefit of the government and even though an error was made in the initial announcement we should approve this appeal and pay his claim."

Discussion

Should a transfer be classified as "in the interest of the Government" or "primarily for the convenience or benefit of an employee"? We have previously established two rules regarding the classification which are applicable to this case. First, "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." Jackie Leverette, GSBCA 15614-RELO, 02-1 BCA ¶ 31,825 (quoting Funai). Second, "The agency can retroactively amend [a] claimant's travel orders when the facts and circumstances clearly demonstrate that some provision previously determined and definitely intended has been omitted through error or inadvertence." Thomas A. McAfoose, GSBCA 15295-RELO, 00-2 BCA ¶ 31,009.

Under these rules, when the classification is questioned, we will examine the facts relating to the transfer for the purpose of deciding whether the agency's determination was arbitrary, capricious, or clearly erroneous, and whether a retroactive amendment of the travel orders is permissible.

We have found in occasional situations that even though an agency advertised a position as conveying no relocation benefits to the individual selected, the actions of agency

officials in offering the position have amounted to a redetermination that the transfer was in the interest of the Government and that benefits should consequently be paid. Gregory M. Chaklos, GSBCA 15685-RELO, 02-1 BCA ¶ 31,773; Funai; Bart J. Dubinsky, GSBCA 14546-RELO, 98-2 BCA ¶ 29,840. In all of these situations, however, the facts that persuaded us pertained to actions occurring before the employee transferred to his new duty station and showed that he relied on this redetermination in making his decision to move.

Mr. Wagner's situation is different. He took a new position with the clear understanding that the transfer was primarily for his own convenience and that relocation benefits would therefore not be paid. The acting medical center director's conclusory statement notwithstanding, there is not a scintilla of evidence that before Mr. Wagner moved to Louisville, his transfer was ever considered to be in the interest of the Government. The employee's desire to be reimbursed for the expenses of his move, more than a year after it occurred, cannot constitute grounds for a retroactive reclassification of the primary beneficiary of the transfer because it has nothing to do with circumstances existing prior to the move. The acting director's effort to provide that reimbursement by redetermining the primary beneficiary is clearly erroneous under the facts of the case. This case is much like four cited by the DVA's Financial Services Center – Michael S. Maram, B-259251 (Sept. 1, 1995); John J. McCracken, B-241216.2 (Aug. 14, 1991); Rosemary Lacey, B-185077 (May 27, 1976); and Dante P. Fontanella, B-184251 (July 30, 1975).

Decision

The claim is denied.

STEPHEN M. DANIELS
Board Judge