

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

August 16, 2002

GSBCA 15899-RELO

In the Matter of GEORGE F. RINGROSE

George F. Ringrose, Reisterstown, MD, Claimant.

Capt. David Gillard, Superintendent, and Cdr. Susan Greer, Deputy Superintendent, United States Naval Observatory, Department of the Navy, Washington, DC, appearing for Department of the Navy.

DeGRAFF, Board Judge.

When an agency transfers an employee from one duty station to another for permanent duty and the transfer is in the interest of the Government, there are certain relocation expenses that the agency is required to pay.

Background

In 2001, when George F. Ringrose was employed by the Department of Defense (DoD) in Mississippi, he learned of a vacancy in a DoD office in Washington, D.C. The vacancy announcement said that DoD might or might not authorize the payment of relocation expenses and asked applicants to state whether they were willing to relocate at their own expense. The announcement also said that DoD might pay a recruitment bonus. Mr. Ringrose applied for the position and said that he was willing to relocate at his own expense if necessary. A DoD employee discussed the job opening with Mr. Ringrose and told him that DoD would not pay his relocation expenses because the vacancy announcement did not say that relocation expenses would be paid.

The position for which Mr. Ringrose applied had been vacant for several months and until DoD received Mr. Ringrose's application, it had not found anyone with the appropriate qualifications to fill the position. DoD selected Mr. Ringrose for the position and he subsequently asked DoD whether it would give him a relocation allowance to help pay for his move. DoD responded by electronic mail message and asked Mr. Ringrose what amount would be beneficial to him. When he said that he wanted \$2000, DoD sent Mr. Ringrose another electronic mail message, stating that it would begin processing his orders to make a permanent change of station for \$2000.

DoD issued a travel authorization dated August 8, 2001. Although the authorization provided that DoD would pay for some of Mr. Ringrose's moving expenses (travel to Washington, per diem en route, and miscellaneous costs), it did not provide that DoD would pay for temporary storage of household goods or for expenses connected with an unexpired lease. The authorization showed the total estimated cost of Mr. Ringrose's travel was not to exceed \$2000, and DoD gave him a travel advance in that amount. Mr. Ringrose reported for duty in Washington on August 26, 2001.

Mr. Ringrose's landlord in Mississippi was not willing to release Mr. Ringrose from his lease contract. The lease was for a minimum term of twelve months, beginning December 15, 2000, and required Mr. Ringrose to pay rent of \$850 per month. He had also paid a \$450 deposit, which the lease said would be forfeited if he did not occupy the residence for the entire term. When Mr. Ringrose left before the end of his lease term, he owed his landlord three and one-half months rent (\$2975) and he forfeited the \$450 deposit. When Mr. Ringrose arrived in Washington, he could not immediately find an affordable place to live and he paid to store his household goods for approximately three months.

Mr. Ringrose asked DoD to reimburse him for his lease breaking and household goods storage expenses. DoD decided to deny his request and Mr. Ringrose asked us to review DoD's decision. In its submission to us, DoD says that it offered Mr. Ringrose a recruitment incentive in the fixed amount of \$2000, that it never determined that Mr. Ringrose's transfer was in the interest of the Government, and that it never intended to pay all of his relocation expenses.

Discussion

By statute, when an employee is transferred in the interest of the Government from one official duty station to another for permanent duty, the Government is required to pay for some relocation expenses and it may, if it chooses, pay for other relocation expenses. Among the expenses that the Government is required to pay are those for transportation and per diem for the employee and his or her dependents, shipment and temporary storage of household goods, miscellaneous costs, and real estate transactions, including the settlement of an unexpired lease at the old duty station. 5 U.S.C. §§ 5724, 5724a (2000). Thus, if Mr. Ringrose's transfer was in the interest of the Government he is entitled to be reimbursed for these items.

DoD's regulations provided that it did not have to determine whether a transfer would be in the interest of the Government until after it referred applicants to the selecting official. In making its determination, DoD was supposed to consider factors such as whether the position was difficult to fill. If DoD decided not to pay relocation expenses, that decision was supposed to be reduced to writing. All applicants selected for an interview were supposed to be notified in writing whether DoD would pay relocation expenses. If DoD did not conduct any interviews, it was supposed to notify in writing the person selected to fill the

position whether it would pay relocation expenses. Joint Travel Regulations (JTR) C4100-B.3 (Dec. 1, 1999).¹

Looking at the facts surrounding Mr. Ringrose's transfer to Washington, we conclude that DoD determined before he transferred that his transfer was in the interest of the Government. When DoD issued the vacancy announcement to which Mr. Ringrose responded, it had not decided whether it would be in the Government's interest to pay relocation expenses. Although DoD initially told Mr. Ringrose that it would not pay his relocation expenses, if that had been DoD's final decision it should have reduced that decision to writing as required by its regulations. Clearly, however, that was not DoD's final word on the subject. The advertised position had not been filled for quite some time and Mr. Ringrose was the first applicant whose qualifications met DoD's requirements. After DoD selected Mr. Ringrose to fill the position, he asked DoD if it would provide a relocation allowance to help with his move. DoD agreed in writing to do so and subsequently issued a travel authorization that granted some relocation expenses and provided Mr. Ringrose with a travel advance of \$2000. These actions demonstrate that DoD exercised its discretion and determined that Mr. Ringrose's transfer was, in fact, in the interest of the Government. It would be unreasonable for DoD to reverse that determination after Mr. Ringrose moved to Washington. Gregory M. Chaklos, GSBCA 15685-RELO, 02-1 BCA ¶ 31,773; Riyoji Funai, GSBCA 15452-RELO, 01-1 BCA ¶ 31,342.

In its submission to us, DoD says that it should have issued temporary duty travel orders to Mr. Ringrose when he transferred to Washington, instead of issuing the travel authorization that it did, in order to fund Mr. Ringrose's recruitment incentive of \$2000. We cannot conclude that DoD agreed to pay Mr. Ringrose a \$2000 recruitment incentive. Mr. Ringrose did not ask for a recruitment incentive. He asked for a relocation allowance to help with his move and that is what DoD agreed to pay. In addition, it would not have been appropriate for DoD to issue temporary duty travel orders to Mr. Ringrose because he was permanently transferred to Washington, and was not sent there to perform temporary duty.

Although DoD might not have wanted to pay all of Mr. Ringrose's relocation expenses, the statute requires DoD to pay for certain types of relocation expenses that an employee incurs when he or she is transferred in the interest of the Government from one official duty station to another for permanent duty. As DoD's regulations explain, the expenses that the statute requires an agency to pay (transportation and per diem for the employee and his or her dependents, shipment and temporary storage of household goods, miscellaneous costs, and real estate transactions, including the settlement of an unexpired lease at the old duty station) are not subject to negotiation and cannot be reduced or changed. JTR C4102 (Aug. 1, 2000).

Because Mr. Ringrose's transfer to his new permanent duty station was in the interest of the Government, DoD is required by statute to reimburse him for the expenses of transportation and per diem en route to Washington, shipment and temporary storage of

¹ The JTR revisions cited herein were applicable on the effective date of Mr. Ringrose's transfer to Washington. See 41 CFR 302-1.3(d), -1.4(l) (2001).

household goods, miscellaneous costs, and the settlement of his unexpired lease in Mississippi. Mr. Ringrose should submit a voucher to DoD and attach whatever documentation supports the amounts he claims for these items. DoD should then pay Mr. Ringrose in accordance with the regulations as they existed on the effective date of his transfer (August 26, 2001), less the \$2000 it paid in advance of his move.

MARTHA H. DeGRAFF
Board Judge