

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

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March 25, 2003

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GSBCA 15935-RELO

In the Matter of ROBERT BAILEY

Robert Bailey, Orlando, FL, Claimant.

Dianne R. Farrior, Assistant Regional Commissioner, Bureau of Labor Statistics, Department of Labor, Atlanta, GA; and Cindy Williams, Labor Relations Officer, Office of the Assistant Secretary for Administration and Management, Department of Labor, Atlanta, GA, appearing for Department of Labor.

**DANIELS**, Board Judge (Chairman).

Robert Bailey, a senior economist with the Department of Labor's Bureau of Labor Statistics (BLS), transferred from a BLS office in Atlanta, Georgia, to a BLS office in Orlando, Florida, in February 2002. Mr. Bailey contends that this transfer was in the interest of the Government. BLS insists it was primarily for the convenience or benefit of the employee. We conclude that the agency's characterization of the move is clearly erroneous and that the employee is consequently entitled to relocation benefits.

Background

Mr. Bailey had lived in Orlando before being hired by BLS in the summer of 1998. While working for the agency in Atlanta, he had expressed to agency management a desire to return to Orlando. During the summer of 2001, however, he had abandoned hope of being transferred to Orlando and had sold the house he owned there.

In October 2001, the BLS regional commissioner in Atlanta issued a memorandum which stated: "BLS is planning to establish one duty station in either North Carolina or South Carolina and one in Florida for our compensation survey work (National Compensation Survey [NCS]). . . . [W]e will solicit volunteers for reassignment from all current NCS professional staff. Selections will be made based on length of service with the Department." An electronic mail message was sent to economists within the compensation program in Atlanta reiterating the contents of this memo and soliciting volunteers. A second electronic mail message asked employees to "give an indication of which cities you would prefer. . . . It should be an area where there is work available to keep you busy year round."

Mr. Bailey responded to the invitation by asking to be sent to Orlando. He was subsequently sent to open a BLS office there. Another, more senior economist also responded to the agency's solicitation. That economist asked to be sent to Tampa, Florida. His request was denied on the ground that BLS already had sufficient personnel in Tampa.

After moving to Orlando in February 2002, Mr. Bailey submitted a voucher for reimbursement of expenses he and his wife had incurred in traveling from Atlanta to Orlando, transporting their household goods from one city to the other, paying the last two months' rent on their apartment in Atlanta so as to avoid forfeiting a security deposit, and buying a home in Orlando. BLS refused to pay for any of these costs. Instead, it offered to return him to Atlanta at the Government's expense.

### 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 whether the employee may receive 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 certain benefits (subject to regulatory constraints). If the primary beneficiary is the employee, on the other hand, none of these expenses may be paid from Government funds. Steven G. Lovejoy, GSBCA 15826-RELO, 03-1 BCA ¶ 32,069 (2002); Riyoji Funai, GSBCA 15452-RELO, 01-1 BCA ¶ 31,342; 5 U.S.C. §§ 5724(a)(1), (2), (h); 5724a(a), (c), (d), (f) (2000); 41 CFR 302-1.3(a)(1)(i) (2001).

We have previously set forth basic principles governing the determination of primary beneficiary:

Where an agency recruits or requests an employee to transfer to a different location, such transfer is regarded, in the absence of a contrary determination, as being in the interest of the Government and relocation expenses are payable. However, an agency may issue regulations concerning relocation setting forth guidelines as to the specific conditions and factors to be considered in determining whether a transfer is in the interest of the Government and whether relocation expenses will be paid. When the agency has issued such regulations, and has communicated the information in advance and in writing to all applicants, the agency's determination that a transfer is not in the interest of the Government will not be overturned unless the determination is shown to have been arbitrary and capricious or clearly erroneous.

Earl G. Gongloff, GSBCA 13860-RELO, 97-1 BCA ¶ 28,792 (citations omitted); see also Deborah F. Garrett, GSBCA 15904-RELO, 03-1 BCA ¶ 32,127 (2002); Lovejoy; Funai; John A. Monsen, GSBCA 14595-RELO, 98-2 BCA ¶ 30,043; Bart J. Dubinsky, GSBCA 14546-RELO, 98-2 BCA ¶ 29,840; Gerard R. Sladek, GSBCA 14145-TRAV, 98-1 BCA ¶ 29,403 (1997); Paul C. Martin, GSBCA 13722-RELO, 98-1 BCA ¶ 29,412 (1996).

The agency's position, as explained by the BLS assistant regional commissioner in Atlanta, is as follows:

If BLS Atlanta Regional Management had determined that it was in the best interest of the government to have a National Compensation Survey (NCS) position located in Orlando, Florida, we would have posted the job, selected an applicant and would have paid relocation costs . . . , if the candidate selected were transferring from a different location. We did not do this. What we did do was respond to a long held interest of the Region IV NCS staff of considering requests for voluntary relocation to an area where the new sample provided adequate work to support a duty station. . . .

Simply put, management did not request or order [Mr. Bailey] to transfer to Orlando for the benefit of the Government. Rather, we positively reacted/responded to [his] request to relocate for [his] convenience.

We agree with Mr. Bailey that this determination distorts the word "voluntary" beyond recognition. The transfer was voluntary in that Mr. Bailey desired to undertake it. But all transfers for which employees make application are voluntary in this sense, and that does not make those transfers primarily for the benefit of the employees. See Gregory M. Chaklos, GSBCA 15685-RELO, 02-1 BCA ¶ 31,773. Sending Mr. Bailey to Orlando prior to the summer of 2001 would have been principally for the benefit of the employee because Mr. Bailey had expressed an interest in being relocated there and BLS did not have a defined need for him to work permanently in that city. By the time that BLS did transfer Mr. Bailey to Orlando, however, the agency had decided that because of the press of work, it would establish a new duty station in Florida; it had asked that an economist go there to meet that need; it had determined that Orlando was a suitable location for an economist to perform necessary work (which at least one other city in Florida was not); and it had selected Mr. Bailey for that post. Undoubtedly, Mr. Bailey wanted to move to Orlando. Nevertheless, it is clear that the agency took the initiative in asking a qualified employee to establish an office there and recruited from among such employees to fill the job. Thus, under the guidelines explained in Gongloff, describing the transfer of Mr. Bailey to Orlando as primarily for the benefit of the employee is clearly erroneous.

Ironically, BLS's offer to Mr. Bailey of a return posting to Atlanta at Government expense seems to contravene the guidelines as well. Because BLS has determined that it benefits more from having an economist work in Orlando rather than from having one work in Atlanta, based on the record before us, a transfer of Mr. Bailey back to Atlanta would appear to be for the employee's convenience, not in the Government's interest.

Decision

Because the transfer of Mr. Bailey from Atlanta to Orlando was primarily in the interest of the Government, BLS is obligated to pay relocation benefits to Mr. Bailey. The agency shall review his voucher in light of applicable regulations and reimburse him for expenses claimed, as appropriate.

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STEPHEN M. DANIELS  
Board Judge