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

____

July 17, 2006

____

GSBCA 16860-RELO

In the Matter of CHARANETTE Y. DUCKWORTH

Charanette Y. Duckworth, Bowie, MD, Claimant.

Melissa Brown, Staff Attorney, Department of Veterans Affairs, Office of Regional Counsel, Baltimore, MD, appearing for Department of Veterans Affairs.

BORWICK, Board Judge.

In this matter, claimant, Charanette Y. Duckworth, seeks reimbursement of relocation expenses incident to her transfer from a position with the Department of Defense in California to the Department of Veterans Affairs, agency, in Washington, D.C. The agency determined that claimant was not entitled to reimbursement of any relocation expenses because the transfer was for claimant's personal convenience and not in the interest of the Government. We grant the claim. The agency did not follow its regulations and state in the vacancy announcement that relocation expenses would not be reimbursed. Consequently, the transfer is deemed to be in the interest of the Government. The agency is to reimburse claimant allowable relocation expenses upon the claimant's signing a service agreement and submitting a suitable voucher.

Background

Vacancy announcement

In December 2004, the agency desired to fill a budget analyst vacancy in its medical center in Washington, D.C. The agency's human resources checklist for preparation of the vacancy announcement included the notation that relocation benefits were not to be provided and that relocation and recruitment bonuses were not to be provided.

The agency issued Vacancy Announcement FIS-04-160 for a budget analyst position in Washington, D.C. The announcement stated an opening date of December 7, 2004, and a closing date of December 27, 2004, and provided that applications would be accepted from current Federal employees serving under a career or career conditional appointment. Despite the notation on the human resources checklist that relocation benefits were not to be provided, the vacancy announcement did not mention whether or not relocation benefits would be paid if an applicant outside the Washington, D.C. area were selected. The agency states that Ms. Brenda Lucas was the person in its human resources office responsible for preparation of the vacancy announcement.

Claimant, who was employed by the Department of Defense in California at a GS-12 level, applied for the position. On February 23, 2005, the agency notified claimant of its acceptance of her application and stated that claimant would be appointed at a GS-13 level. The agency did not mention in its acceptance letter whether or not relocation benefits would be paid.

Claimant's knowledge as to whether or not relocation benefits would be paid

The parties sharply dispute whether claimant knew that relocation benefits would not be paid before she accepted the budget analyst job. Claimant stated in her initial submission to the Board that because the vacancy announcement was silent as to whether relocation benefits would be paid, before taking the job, she assumed that those benefits would be paid. Claimant also relies on the signed affidavit of Ms. Lucas. Ms. Lucas stated in her signed affidavit that claimant was the only qualified applicant for the budget analyst position. She stated that she called claimant to offer her the position, that claimant inquired about availability of relocation benefits, and that she told claimant she did not then know whether

or not relocation benefits would be paid. She stated that relocation was neither authorized nor unauthorized in the vacancy announcement.[1]

In her final submission to the Board, claimant tells a slightly different version of events from the version recounted in Ms. Lucas's signed affidavit. Claimant recalls that in the original phone conversation between claimant and Ms. Lucas, Ms. Lucas asked whether claimant accepted the agency's offer of employment. Claimant said yes. After claimant had orally accepted the agency's offer and at the end of the conversation, claimant asked Ms. Lucas about relocation benefits. Claimant remembers Ms. Lucas stating that Ms. Lucas did not believe relocation benefits were authorized, but that the issue of relocation would be addressed in the agency's formal acceptance letter. As we have seen above, the agency's acceptance letter did not address the issue.

The agency states that claimant knew before she accepted the position that relocation benefits would not be paid. In support of that position, the agency relies upon an e-mail message from Ms. Lucas dated April 24, 2006, to another agency official wherein Ms. Lucas states that she spoke to claimant and another recently-hired employee about relocation expenses and that she had told each of them that relocation expenses were not authorized according to the "cover sheet [referring to the human resources checklist] that was accompanied by the request to announce the positions." However, the e-mail message does not indicate whether Ms. Lucas made that unconditional statement before claimant accepted the position, or after claimant arrived at her permanent duty station, when they were continuing conversations about the relocation benefits issue. Based the silence of the vacancy announcement as to relocation, and Ms. Lucas's statement in her signed affidavit that she did not know whether relocation benefits were authorized, we conclude that claimant formed a reasonable belief that relocation benefits would be paid upon her transfer.

---

[1] Ms. Lucas left the agency in May 2005. In support of its position that claimant knew before accepting the position that relocation benefits would not be paid, the agency originally relied upon Ms. Lucas's unsigned affidavit. That document stated that Ms. Lucas informed claimant, before she accepted the appointment, of Ms. Lucas's belief that relocation benefits would not be paid. The agency provided this unsigned affidavit as a preview of what Ms. Lucas's signed affidavit would state when agency counsel could obtain Ms. Lucas's signature. Because the affidavit is unsigned, we do not consider it.

Incurred expenses

In her original submission to the Board, claimant stated that she claimed the following expenses incurred incident to transfer:

Item	Amount
Settlement expenses upon sale of house	$30,674
Settlement expenses for purchase of residence	$13,051
Shipment of household goods	$13,852
Rent to live in temporary quarters	$1,500
Transportation of three cars	$2,045
Packing supplies	$520
Airline transportation for self and family	$436
Registration of vehicles	$990
Deposits for utilities	$300
Total	$63,368

In its submission to the Board, the agency argued that even if claimant were found to be entitled to relocation benefits, the amounts claimed are either excessive or, in some instances, unallowable under regulation. In response, claimant stated that her claim was "only to determine if relocation should be paid by law." Thus the issue now before the Board is whether the agency is obligated to pay claimant relocation expenses, not whether any particular items of the expenses listed above are allowable.

Service agreement

The agency presented claimant with a sample service agreement. Claimant states that an agency official requested that claimant draft and sign a service agreement, indicating her acceptance of $5000 as a settlement in lieu of the agency's payment of relocation expenses. Claimant refused to sign a service agreement with that condition. Before the Board, the agency construes claimant's refusal as a blanket refusal to sign any service agreement.

Discussion

By statute, when an employee is transferred in the interest of the Government, the Government is required to pay for some relocation expenses and it may chose to pay for other relocation expenses. 5 U.S.C. §§ 5724, 5724a (2000); *George F. Ringrose*, GSBCA 15899-RELO, 02-2 BCA ¶ 32,032. A 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. *Mark Huckel*, GSBCA 16019-RELO, 03-1 BCA ¶ 32,231.[2] However, an agency may issue regulations concerning relocation which set forth specific guidelines as to when relocation expenses must be paid. When the agency has issued such regulations, the transfer will generally be deemed in the interest of the Government unless: (1) the agency applies the guidelines to determine whether a promotion-related transfer would primarily benefit the employee rather than the Government; and (2) if the determination is that the transfer would not primarily benefit the Government such that relocation costs would not be paid, the agency must communicate the information in advance and in writing to all applicants. *Huckel* (citing *Gregory M. Chaklos*, GSBCA 15685-RELO, 02-1 BCA ¶ 31,773). If the agency does those things, the determination that a transfer was not in the interest of the Government will not be overturned unless the determination is found to have been arbitrary and capricious. *Huckel* (citing *Earl G. Gongloff*, GSBCA 13680-RELO, 97-1 BCA ¶ 28,792).

Here, the agency has issued such regulations--the VA Handbook 5005, part III, Chapter 2. Paragraph 14c(2)(b) of the handbook provides that:

> Payment of relocation expenses is not generally considered appropriate in the following situations, unless there is a specific determination by the duly designated official that such a transfer is primarily in the best interest of the Government:
>
> . . . .
>
> (b) Transfer eligibles from outside the agency even though the applicants are rated and ranked under agency promotion procedures, since the VA program applies to VA employees only[.]

However, paragraph 14b of that same document provides that:

> A decision that relocation expenses will or will not be paid in connection with filling a position under a merit promotion plan must be clearly communicated in advance to all prospective applicants by a statement on the vacancy announcement.

---

[2] *Huckel* is a case factually similar to the instant case, as it involved an agency employee hired, promoted, and transferred from another agency to the Department of Veterans Affairs. We apply in this case the same internal agency regulations that we applied in *Huckel*.

In this case, claimant's transfer from the Department of Defense to the agency was a one-grade promotion; the agency does not argue that claimant's selection for the position and subsequent transfer fell outside the agency's merit promotion program and was thus not subject to the guidelines.[3] As such, the agency was obliged under its regulations to clearly communicate in the vacancy announcement any determination that the selection and subsequent transfer for the budget analyst position would not be in the interest of the Government and that relocation expenses would not be paid. *Huckel*. In *Huckel,* we ruled that because the agency failed to follow its regulations in this regard, the transfer must be regarded in the interest of the Government, and the agency is required to pay claimant's allowable relocation expenses.

The agency seeks to distinguish *Huckel*, arguing that the claimant in *Huckel* did not know that relocation benefits would not be paid, while claimant here knew that relocation benefits would not be paid. The agency errs for two reasons. First, we have found that claimant here possessed a reasonable belief that relocation benefits would be paid. Second, the agency misconstrues our ruling in *Huckel*, which turned on the agency's failure to follow its regulations, which sensibly require a clear statement in the vacancy announcement, not on the state of claimant's knowledge.

We turn to the dispute over the service agreement. A transportation or service agreement is a necessary prerequisite for the payment of any relocation expenses. 41 CFR 302-2.13 (2005); *Armando G. Solis*, GSBCA 15713-RELO, 02-2 BCA ¶ 31,870. The parties are at odds over claimant's reasons for refusing to sign a service agreement. We credit claimant's statement that she refused to sign the service agreement because the agency conditioned the service agreement on her accepting a $5000 payment and foregoing reimbursement entitlements. The law does not permit an agency to limit payment of relocation benefits in this way. The agency shall provide claimant an opportunity to sign a service agreement for relocation benefits.

---

[3] Regulations of the Office of Personnel Management generally require agencies to have in place agency promotion programs for the type of promotion action in this case. 5 CFR 335.103(a) (2005).

The Board grants the claim. Claimant is entitled to be reimbursed relocation expenses because her transfer is deemed to be in the interest of the Government, as long as she signs a service agreement. Upon submission of a signed service agreement and a suitable voucher, the agency is to consider claimant's request for reimbursement of relocation expenses.

____
ANTHONY S. BORWICK
Board Judge