Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

October 20, 2006

GSBCA 16953-RELO

In the Matter of CECELIA R. WILLIAMS

Cecelia R. Williams, Fort Washington, MD, Claimant.

Michael L. Watson, Acting Director, Central Office, Human Resources Service, Office of Human Resources Management and Labor Relations, Department of Veterans Affairs, appearing for Department of Veterans Affairs.

DANIELS, Board Judge (Chairman).

An agency may not state in a vacancy announcement that it will reimburse the successful candidate for expenses she incurs in relocating to the new duty station and then deny payment of those expenses.

Background

In February 2004, the Department of Veterans Affairs (VA) determined that it needed at the agency's central office in Washington, D.C., an accountant who would be paid at a level from GS-9 to GS-13. An internal "HR [Human Resources] Liaison Recruitment Checklist" for this job contains the line "Relocation expenses: no. Not authorized by office."

In March, the VA issued two vacancy announcements for the position. The announcement which was issued for internal VA candidates included a note which was consistent with the statement on the HR checklist: "Relocation expenses are NOT authorized." The announcement which was issued on the USAJOBS website, opening

competition to applicants from other federal government agencies, included a contrary note: "RELOCATION EXPENSES ARE AUTHORIZED."

Cecelia R. Williams was at this time working for the Department of the Treasury in Parkersburg, West Virginia, as a GS-12 accountant. Ms. Williams read the vacancy announcement on the USAJOBS website and applied for the advertised position at the VA. During her interview, the director of the office where the successful applicant would be employed told her that the announcement's notation regarding relocation expenses was erroneous and that the office would not pay for those costs.

In June 2004, the VA offered Ms. Williams the position at the pay grade of GS-13. She accepted the offer.

After beginning work, Ms. Williams asked to be reimbursed for the expenses she incurred in relocating from Parkersburg to Washington. The VA observes that the address which Ms. Williams used in applying for the position, and to which the agency sent its job offer, is in Fort Washington, Maryland, a suburb of Washington. In response to Ms. Williams' claim for relocation expenses, the agency says:

> VA requests that the Board ascertain whether Ms. Williams' legal residence was in West Virginia or Fort Washington, MD, at the time she accepted the position with VA, and whether she relocated to the Washington, DC area in reliance on the statement in the USAJOBS announcement that relocation expenses would be paid. If she did, in fact, relocate to Washington, DC in reliance on the announcement, VA will authorize relocation expenses for Ms. Williams in accordance with applicable laws and regulations governing permanent change of station.

Ms. Williams tells us that she actually lived near Parkersburg, West Virginia, while she was working there and commuted daily between that residence and her place of employment. She has provided a copy of an expired West Virginia driver's license showing an address near Parkersburg and a copy of an automobile insurance policy which states that her car was regularly garaged at that address. Ms. Williams points out that the distance between Fort Washington and Parkersburg is so great – mapquest.com pegs it as 338 miles – that she could not possibly have commuted between Fort Washington and her job location while she was working in Parkersburg.

Discussion

This is the third case we have heard in the past three years involving Department of Veterans Affairs vacancy announcements which have not made clear the agency's own determinations as to whether relocation benefits will be offered to individuals selected for advertised positions. In *Mark Huckel*, GSBCA 16019-RELO, 03-1 BCA ¶ 32,231, the agency decided that it would not pay relocation expenses to the successful candidate for a job and said as much in a vacancy announcement for internal candidates, but did not say anything about relocation expenses in the announcement which permitted employees of other federal agencies to apply. In *Charanette Y. Duckworth*, GSBCA 16860-RELO (July 17, 2006), the VA again decided not to pay relocation expenses but did not say anything about that determination in the vacancy announcement it issued. And now we face the third case in recent years which stems from the same sort of difficulty: here, the VA decided not to pay relocation benefits to the successful candidate for a position, and in two vacancy announcements for that position, told internal candidates that it would not pay these benefits but told external candidates that it would pay those benefits.

Huckel and *Duckworth* were both resolved in the same way: The 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 and therefore one for which relocation benefits will be paid. 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. If the agency in applying those guidelines determines that a promotion-related transfer would primarily benefit the employee rather than the Government and that relocation benefits will therefore not be paid, and if the agency communicates that information in advance and in writing to all applicants, the agency's determination will be honored unless it is shown to have been arbitrary and capricious or clearly erroneous. Because the VA did not communicate in writing to all applicants, in either vacancy announcement, its decision not to pay relocation benefits, the successful applicants for the merit promotion positions were granted relocation benefits.

The case now before us suggests a more obvious resolution than *Huckel* and *Duckworth* in one way and poses a complication in another. It suggests a more obvious resolution in that in those cases, the vacancy announcements failed to say anything about whether relocation benefits would be paid to applicants from other agencies, but here, the announcement specifically stated that those benefits would be paid. Whereas Mr. Huckel and Ms. Duckworth, as applicants from other agencies, could have assumed that relocation benefits would be paid, Ms. Williams, as a similarly-situated applicant, was on notice that those benefits would be paid. This makes her case even more compelling than the others.

On the other hand, a VA official did tell Ms. Williams, before she accepted the job, that contrary to the notice, the benefits would not be forthcoming – something that did not happen to the employees in the other two cases. We have already decided, however, that the resolution of these cases turns on whether an agency followed its regulations by placing a clear statement in the vacancy announcement, not on the state of a claimant's knowledge. *Duckworth*. And we have also decided that an oral statement which is contrary to the notification in a vacancy announcement cannot revoke such a statement. *Paul B. D'Agostino*, GSBCA 16841-RELO, 06-2 BCA ¶ 33,309. The purpose of the requirement for written notification, as we explained in *Huckel*, is to ensure that every person who applies for a position will do so with the same understanding of the conditions under which relocation expenses will or will not be paid. We conclude that Ms. Williams, who received a promotion in accepting the position at issue, is entitled to relocation benefits.

There remains the question of whether Ms. Williams actually relocated in order to work for the VA in Washington. Generally, an employee transferring in the interest of the Government from one permanent duty station to another is eligible for relocation benefits if his new duty station is at least fifty miles distant from his old duty station. 41 CFR 302-1.1(b) (2004) (*but see id.* 302-2.6 for exceptions). For the purpose of determining these benefits, the "permanent duty station" is the place where an employee regularly reports for duty or (with rare exceptions not relevant here) the residence from which the employee regularly commutes to and from work. *Jennifer Harris*, GSBCA 16767-RELO, 06-1 BCA ¶ 33,256; *Roger Henry*, GSBCA 16300-RELO, 04-1 BCA ¶ 32,581; *Marko Bourne*, GSBCA 16273-RELO, 04-1 BCA ¶ 32,544 (2003); *Paul Henderson*, GSBCA 15480-RELO, 01-2 BCA ¶ 31,501. Although Ms. Williams used a Fort Washington, Maryland, address for receiving mail while she was working in Parkersburg, West Virginia, the residence from which she regularly commuted to and from work was close to Parkersburg. To work in Washington, Ms. Williams had to move from that residence to one from which she could regularly commute to and from her new job. Whether the Fort Washington or West Virginia address was her legal address is irrelevant. The VA should determine her relocation benefits based on our conclusion that she relocated from West Virginia to begin work in Washington.

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STEPHEN M. DANIELS
Board Judge