



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

August 20, 2008

CBCA 1191-RELO

In the Matter of TERRY L. KIDD

Terry L. Kidd, Grand Junction, CO, Claimant.

Melissa J. Dukes, Human Resources Officer, Bureau of Land Management, Department of the Interior, Lakewood, CO, appearing for the Department of the Interior.

SOMERS, Board Judge.

Claimant, Terry L. Kidd, seeks reimbursement of relocation expenses incurred incident to his transfer from a position with the Department of Homeland Security in Casa Grande, Arizona, to a position with the Department of the Interior, Bureau of Land Management (the agency), in Grand Junction, Colorado. We grant Mr. Kidd's claim for the reasons set forth below.

Background

In March 2007, the agency posted a vacancy announcement for a position as a telecommunications specialist in Grand Junction, Colorado. The announcement provided that applications would be accepted from current federal employees serving under a career or career-conditional appointment, applicants eligible for reinstatement, and certain veterans. Although the agency had apparently decided not to pay relocation expenses, the agency did not say anything about those expenses in the vacancy announcement.

Mr. Kidd applied for the position. At the time of the application, Mr. Kidd held a position as a telecommunications specialist within the Department of Homeland Security. On February 23, 2005, the agency called Mr. Kidd to inform him that he had been selected for the position. During this conversation, Mr. Kidd asked whether he would be reimbursed for relocation expenses. The agency representative from human resources did not know

whether the agency would pay for the relocation. Later, Mr. Kidd spoke with the selection official, who informed him that relocation expenses were not authorized.

Mr. Kidd accepted the position, moved to Grand Junction, and submitted a claim for reimbursement of various relocation expenses totaling \$5960.90.

Discussion

By statute, when an employee is transferred in the interest of the Government, the agency is required to pay for specified travel and relocation expenses. 5 U.S.C. §§ 5724, 5724(a) (2000). 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 and, therefore, one for which relocation benefits will be paid. *Cecelia R. Williams*, GSBCA 16953-RELO, 06-2 BCA ¶ 33,436. 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 to be in the interest of the Government unless the agency (1) applies the guidelines to determine that a promotion-related transfer would primarily benefit the employee rather than the Government, and (2) communicates that information in advance and in writing to all applicants. *Mark Huckel*, GSBCA 16019-RELO, 03-1 BCA ¶ 32,231. 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. *Id.*

Claimant has furnished pertinent sections of the agency's Personnel Bulletin No. 99-6 setting forth the criteria for determining whether the transfer is primarily in the interest of the Government. If the voluntary transfer is not "primarily for the convenience or benefit of the employee or at his/her request," it is regarded as "in the interest of the government" and payment of travel, transportation, and relocation expenses must be authorized. "Primarily for the convenience or benefit of the employee or at his/her request" is defined as "a voluntary transfer" that has resulted from:

Selection of an employee for transfer who has responded to a vacancy announcement that contains the following statement:

"Travel, transportation and relocation expenses will not be paid by the Department. Any travel, transportation and relocation expenses associated with reporting for duty in this position will be the responsibility of the selected employee."

Claimant's Submission, Attachment 4. Both Mr. Kidd and the agency agree that the vacancy announcement did not contain the statement denying relocation expenses.

In *Huckel*, the agency decided that it would not pay relocation expenses and said as much in a vacancy announcement for internal candidates. However, it failed to say anything about relocation expenses in the vacancy announcement for outside candidates. Likewise, in *Charanette Y. Duckworth*, GSBCA 16860-RELO, 06-2 BCA ¶ 33,358, the agency decided not to pay relocation expenses, but failed to include that determination in the vacancy announcement. In both cases, the General Services Board of Contract Appeals, our predecessor in handling this type of case, found that the lack of a clear statement makes the transfer "in the interest of the government" and therefore requires that the Government pay reimbursable relocation expenses.

Thus, resolution of each of these cases turned upon whether the agency followed its own regulations in issuing the required clear statement in the vacancy announcement. Here, the lack of the clear statement, required under the agency's own policy, means that the relocation falls under the category of "in the interest of the government" and therefore the expenses arising from the relocation are reimbursable.

The agency contends that an agency official told Mr. Kidd that reimbursement of relocation expenses would not be authorized. Even if that were the case, to the extent that Mr. Kidd may have been given erroneous advice, such advice cannot overcome the clear statement in the vacancy announcement required under the agency's own personnel policy.

The claim is granted. Claimant is entitled to be reimbursed relocation expenses because his transfer is deemed to be in the interest of the Government.

JERI KAYLENE SOMERS
Board Judge