



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

October 8, 2020

CBCA 6800-RELO

In the Matter of JIMMY R. JOHNSON

Lawrence Berger of Mahon & Berger, Esqs., Glen Cove, NY, appearing for Claimant.

Jeffrey C. Good, Employee Law Unit 1, Federal Bureau of Investigation, Department of Justice, Washington, DC, appearing for Department of Justice.

BEARDSLEY, Board Judge.

Claimant, an employee of the Federal Bureau of Investigation (FBI or agency), requests reimbursement for relocation costs in the amount of \$83,335.35 in connection with his permanent change of station transfer. We deny his claim.

Factual Background

In February 2019, claimant completed his four-year term assignment in an agency field office (Field Office). From 2013 to 2015, immediately prior to his assignment to the Field Office, claimant was at the agency's headquarters in Washington, D.C. In December 2018, claimant requested a "cost" (at the Government's expense) transfer to his original office of assignment, once his term assignment in the Field Office ended. The agency, however, denied claimant's request to transfer to that office at the Government's expense and informed claimant that he had three transfer options after his term assignment ended:

Per HRD [Human Resources Department] based on the posting, our policy, and precedent, [claimant] has three options at the end of his term: 1) He can be placed in another position for which he is qualified at GS-14 . . . at FBIHQ as a cost transfer (only cost transfer option, others are no cost); or 2) He has the option to step down as a GS-13 to the [Field Office] at no cost if staffing

allows; or 3) Be sent back to his office of assignment . . . at no cost. If he goes back to his office of assignment, he will be stepping down to a GS-13 position.

Under protest, claimant relocated to his original office of assignment at his own expense. He thereafter submitted a request for reimbursement of his relocation expenses.

Claimant asserts that the transfer should have been a cost transfer. He relies on the job posting for his term assignment to the Field Office, which stated:

Upon completion of the term assignment, the following applies:

1. If selectee was a permanent grade below GS-14 at the time of selection, he/she will revert to previous grade and if staffing allows will step down to [the Field Office] OR be transferred back to their original office of assignment.

At the time of selection, claimant was a GS-13. He also points to the 2009 FBI Employee Transfer Policy Guide (the Guide) that states that “the transfer will be considered a cost transfer” when “[t]he new duty station is at least 50 miles further from the employee’s current residence than the old duty station is from the same residence.” The Guide also states that staffing needs, current transfer policy, and other factors deemed pertinent by the agency govern assignments. Claimant further asserts that the addition of “no-cost” language to the new term assignment job posting for the same detailee position, and the cost transfer of another employee under language similar to claimant’s term assignment job posting support his position that the agency’s policy and precedent support reimbursement of claimant’s relocation expenses.

The agency denied the claim on the grounds that the transfer must be in the interest of the Government for the agency to pay relocation costs. The agency maintains that the transfer to his original office of assignment was for claimant’s convenience and benefit because the Field Office was understaffed by three and the original office was overstaffed by four, and later six, employees in claimant’s position.

Discussion

Relocation expenses resulting from a transfer from one official station to another for permanent duty are reimbursed only if the employee’s transfer was in the interest of the Government. 5 U.S.C. § 5724(a) (2018). For transfers that are “made primarily for the convenience or benefit of an employee,” relocation expenses are not “allowed or paid from Government funds.” 5 U.S.C. § 5724(h); *Wilberto M. Sanchez*, CBCA 4724-RELO, 16-1 BCA ¶ 36,270. The “determination of whether a transfer is in the interest of the Government is a matter within an agency’s discretion, and such discretion will be upheld unless it is

‘arbitrary, capricious or clearly erroneous.’” *Amy Preston*, CBCA 3434-RELO, 13 BCA ¶ 35,465 (citing *Riyoji Funai*, GSBCA 15452-RELO, 01-1 BCA ¶ 31,342). The Federal Travel Regulation (FTR), which implements these statutory provisions, specifically authorizes reimbursement for relocation expenses only if the permanent change of station was made in the interest of the Government. 41 CFR 302-1.1, -1.2, -2.101 (2018).

Claimant has failed to establish that his transfer was in the Government’s interest, that the staffing levels were erroneous, or that the agency’s reliance on staffing levels to determine claimant’s next assignment was arbitrary or capricious. The fact that claimant was allowed to return to his original office of assignment does not guarantee that the transfer would be at Government expense. It is necessary that claimant show that the transfer was in the Government’s interest and not for his convenience or benefit. It was not in the Government’s interest to transfer claimant to an overstaffed office, especially since the Field Office was understaffed.

Claimant argues that the agency’s determination that the transfer to his original office of assignment was not in the Government’s interest was arbitrary, capricious, and erroneous because it contradicted the terms of the job posting, cost transfers made under similar job postings, the addition of “no cost” language in the new job posting for the detailee position, and the agency’s transfer policies. We disagree. Claimant’s job posting was silent as to whether the transfer to his original office of assignment would be at cost or no cost, and the posting indicated that staffing levels could determine claimant’s next assignment. Notably, the agency’s Guide identifies staffing levels as an acceptable basis for determining claimant’s next assignment.

The record indicates that the inclusion of no cost language in the new job posting for the same detailee position was no more than the agency’s attempt to clarify the terms of future job postings, and not evidence that the agency intended claimant’s transfer to his original office of assignment to be at the Government’s expense as claimant suggests. There is also no evidence that the cost transfer that occurred under a similar job posting for another employee involved the same or similar circumstances. The agency could properly reimburse an employee’s expenses if the transfer was made in the Government’s interest, even under the job posting language here.

The Guide’s policy that the distance to the new duty station from the employee’s residence determines if the transfer is a cost or no cost transfer is not consistent with the FTR. *See Kevin D. Reynolds*, CBCA 2201-RELO, 11-1 BCA ¶ 34,756 (agency travel regulations are valid to the extent that they are consistent with the controlling FTR). The FTR allows for relocation expense allowances if one is “[a]n employee transferring in the interest of the Government from one agency or duty station to another for permanent duty, and your new duty station meets the 50-mile distance test.” 41 CFR 302-1.1(b) (emphasis

added). According to the FTR, the distance to the new duty station does not determine if an assignment is in the Government's interest.

We find that the agency's denial of claimant's reimbursement claim was not arbitrary, capricious, or clearly erroneous. Claimant has not met his burden of showing that his transfer was in the interest of the Government rather than a transfer for his benefit or convenience.

Decision

For the foregoing reasons, the Board denies this claim for reimbursement of relocation expenses.

Erica S. Beardsley
ERICA S. BEARDSLEY
Board Judge