

**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D. C. 20548**

**FILE:** B-213807

**DATE:** May 10, 1984

**MATTER OF:** James L. Skolaut - Relocation Expenses -  
Transfer at Employee's Request

**DIGEST:**

An employee who was transferred without authorization for reimbursement of relocation expenses claims entitlement to reimbursement on the grounds that his transfer was in the interest of the Government. The employing agency determined that the transfer was primarily for his convenience since it was at his request. Since the record does not indicate that the determination was arbitrary or capricious, GAO will not disturb it.

This decision is in response to a request from the Assistant Secretary for Administration and Management, U.S. Department of Labor (DOL), concerning the entitlement of Mr. James L. Skolaut to relocation expenses he incurred incident to his permanent change of station from Portland, Oregon to Omaha, Nebraska. Mr. Skolaut, an employee with the DOL Employment Standards Administration (ESA) was not authorized relocation expenses in connection with his transfer, but claims he is entitled to reimbursement of those expenses because his transfer was in the interest of the Government. Officials at ESA denied Mr. Skolaut's claim on the grounds that his transfer was at his request and for his convenience. For the reasons we will explain below, we agree that Mr. Skolaut is not entitled to reimbursement.

FACTS

In November 1981, Mr. Skolaut, who was then an Area Director in the ESA Portland Area Office, filed in advance for an expected vacancy in the same position in the Omaha Area Office. On December 17, 1981, he wrote a memorandum and added to his request for transfer the understanding that he would pay a portion of his moving expenses for which PCS money was not available. The DOL Kansas City Regional Office issued the expected vacancy announcement on February 10, 1982. On February 21, 1982, Mr. Skolaut

wrote another memorandum to his superior in the DOL Seattle Regional Office offering to pay all of his moving expenses if he was selected for the Omaha position. In March 1982 the Kansas City Regional Office canceled the Omaha vacancy announcement.

No further action was taken to fill the vacancy until August 1982, when ESA officials decided to allow Mr. Skolaut to transfer to Omaha and to move another employee from Hyattsville, Maryland to Portland, Oregon at Government expense to replace him. Mr. Skolaut was informed of this decision by telephone on September 1, 1982. He was later informed that October 4, 1982, had been set as his reporting date to the Omaha Area Office. He requested a 2-week delay for health reasons but learned on September 21, 1982, that the delay had been refused. On September 22, 1982, he wrote to his supervisor in the Seattle Regional Office that he was withdrawing his offer to voluntarily transfer and pay his moving expenses. On October 6, 1982, the Seattle Regional Administrator informed him that he had received his memorandum, but that since his transfer was consummated and effective on October 3, Mr. Skolaut's official duty station was now Omaha.

Mr. Skolaut moved his family and household goods from Portland to Omaha, arriving there on October 16, 1982. His subsequent claim for reimbursement in the amount of \$6,045.04 was denied by the agency.

The DOL Assistant Secretary for Administration and Management summarized Mr. Skolaut's claim as follows:

"The selection of Mr. Skolaut for the Omaha position was to accommodate him. Mr. Skolaut's skills were not so significantly superior to the other candidates that it would have been in the best interest of the Government to relocate him. Also, immediately after Mr. Skolaut's acceptance of the Omaha position, the Portland position was offered to and accepted by an ESA employee whose position had been abolished. The employee who filled the position vacated by Mr. Skolaut was already in the process of relocating to Portland when Mr. Skolaut withdrew his

offer to voluntarily transfer to Omaha. At this point in time, the Department could not reverse the events already in motion and thus, denied Mr. Skolaut's withdrawal."

#### EMPLOYEE'S ARGUMENTS

Mr. Skolaut claims that his transfer was in the Government's interest and that he is entitled to reimbursement of relocation expenses because there was a vacancy which had to be filled in order to maintain an Area Office in Omaha. He also claims that he did not spontaneously offer to pay his own moving expenses, but that ESA improperly bargained with him until he agreed to pay all expenses. He states further that although he had offered to pay moving expenses in February 1982, when the vacancy was advertised, there was no evidence that his offer still existed in October 1982, and he was neither informed orally or in writing that the expenses would not be reimbursed.

Finally, Mr. Skolaut argues that even though he had made an earlier request to transfer, he withdrew that request prior to the effective date of the transfer to Omaha, and since ESA required him to transfer despite the withdrawal of his offer, it became ESA's responsibility to pay his moving expenses.

#### OPINION

Reimbursement of travel and transportation expenses upon employee's change of station is provided for by 5 U.S.C. §§ 5724 and 5724a (1976), but is conditioned upon a determination by the head of the agency concerned or by the designated official that the transfer is in the interest of the Government and is not primarily for the convenience or benefit of the employee, or at his request. See Federal Travel Regulations (FTR) (FPMR 101-7) (September 1981), paragraph 2-1.3.

In recognition of the authority granted to the employing agency to determine whether a transfer is in the interest of the Government and is not primarily for the convenience or benefit of the employee, or at his request, we have consistently stated that we will not overturn an agency's determination unless it is arbitrary, capricious,

or clearly erroneous under the facts of the case. See John J. Hertzke, B-205958, July 13, 1982. In Dante P. Fontanella, B-184251, July 30, 1975, we set forth the following three rules regarding these types of determinations:

"[1] If an employee has taken the initiative in obtaining a transfer to a position in another location, an agency usually considers such transfer as being made for the convenience of the employee or at his request, [2] whereas, if the agency recruits or requests an employee to transfer to a different location it will regard such transfer as being in the interest of the Government. [3] Of course, if an agency orders the transfer and the employee has no discretion in the matter, the employee is entitled to reimbursement of moving expenses."

From the record before us it seems clear that Mr. Skolaut took the initiative in obtaining his transfer. He applied for the position before the vacancy was announced and confirmed that application after the vacancy was announced. Furthermore, the Regional Administrator, in his letter to Mr. Skolaut of October 6, 1982, pointed out that Mr. Skolaut's transfer was for his personal convenience, that he had persisted in his efforts to be transferred since August 1981, and that, had it not been for his offer to pay his own moving expenses, there would have been no business reason for his transfer.

Mr. Skolaut argues that his transfer was in the interest of the Government because a vacancy existed which had to be filled in order to maintain an Area Office in Omaha. In John G. Sears, B-193631, May 3, 1979, an employee, who was also seeking reimbursement of his relocation expenses, argued that his transfer was in the interest of the Government because numerous vacancies existed in the office to which he was transferred and his experience helped to fill the void. We denied his claim, stating that while his services in his new position were presumably of benefit to the Government, that did not change his transfer to one in the interest of the

Government since he had taken the initiative in obtaining the transfer. See also Norman C. Gerald, B-199943, August 4, 1981, and Dante P. Fontanella, cited above.

Mr. Skolaut's transfer was a lateral promotion to a position with the identical title, grade and potential for promotion. Thus, his transfer would not be considered to be under a merit promotion program so as to make the transfer one primarily in the interest of the Government. See Eugene R. Platt, 59 Comp. Gen. 699 (1980). Even though we have considered transfers resulting from competitive selection pursuant to merit promotion announcements to be in the best interest of the Government in the absence of agency policy to the contrary, we have consistently recognized that this is not the case with respect to lateral transfers between positions at the same grade without greater known promotion potential. Julie-Anna T. Tom, B-206011, May 3, 1982.

Mr. Skolaut argues that he should be reimbursed because ESA forced him to transfer even though he attempted to withdraw his acceptance of the transfer. Thus, he alleges that the transfer was ordered by the agency and is within the confines of the third rule of Fontanella. We do not believe that this is the type of situation contemplated by that rule. We believe that it applies where the transfer is ordered and thereby initiated by the agency--not where the employee has requested the transfer, accepted it, and then just prior to his actual move, attempts to withdraw his acceptance.

Mr. Skolaut also argues that there was no reason for ESA to assume that his agreement to pay moving expenses was still in effect in September. However, there was no basis for Mr. Skolaut to assume that the ESA was willing to pay for the transfer it offered him September 1. Mr. Skolaut was never issued a travel authorization nor was he required to sign a service agreement--a prerequisite for reimbursement of relocation expenses. Mr. Skolaut states that he was not informed, either orally or in writing, that ESA would not pay his expenses. However, in his memorandum of September 22, 1982, withdrawing his offer to voluntarily transfer, he states: "I will not pay any moving expenses incurred if I am forced to transfer." Thus, this statement seems to indicate that Mr. Skolaut was aware of the fact that he would be required to pay his moving expenses.

B-213807

We do not believe that ESA acted in an arbitrary or capricious manner when it refused to cancel Mr. Skolaut's transfer--a transfer which he requested for his own convenience and then attempted to cancel at the last minute. The agency had offered his replacement a transfer on September 1, the same day he was offered a transfer, and his replacement's transfer was already under way. Thus, the agency felt that there was no way it could reverse the situation at that time.

Mr. Skolaut has also alleged that ESA improperly bargained with him concerning the payment of his relocation expenses. Since we have found nothing arbitrary or capricious in ESA's determination that Mr. Skolaut's transfer was primarily for his convenience, we cannot say that its actions were improper.

In light of the above the agency's determination not to pay relocation expenses is hereby sustained.

*Milton J. Fowler*  
Acting Comptroller General  
of the United States