



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Michael S. Maram

File: B-259251

Date: September 1, 1995

DIGEST

The Social Security Administration's decision to deny relocation expenses to a transferred employee was not arbitrary, capricious or clearly erroneous where, on the basis of all the circumstances, it determined that the transfer was at the employee's request and primarily for the convenience or benefit of the employee.

DECISION

Mr. Michael S. Maram, an Administrative Law Judge (ALJ) of the Social Security Administration (SSA) appeals our Claims Group's decision denying his claim for relocation expenses. In his appeal Judge Maram contends that the determination of the SSA that his transfer was not in the interest of the government is arbitrary, capricious or clearly erroneous on the basis of all the circumstances involved.¹ For the following reasons, we affirm our Claims Group's decision, and deny the claim.

The record shows that Judge Maram was assigned to the Dallas (North) Hearing Office, Dallas, Texas, in 1991. On October 22, 1991, the Acting Chief ALJ issued a survey to determine if any ALJs were interested in relocation at their own expense. By memorandum, dated November 4, 1991, Judge Maram advised the Acting Chief ALJ that he was requesting a relocation to an SSA location in Florida primarily because of a medical condition affecting his wife which was exacerbated by the climate in Dallas. His request was not granted.

By memorandum to the Regional Chief ALJ, dated May 29, 1992, Judge Maram resubmitted the request and asked that it be reconsidered as a hardship case. He noted that another Regional Chief ALJ had stated that the workload of the Hearing Office in Tampa, Florida, warranted an additional ALJ, and he stated: "I am fully

¹See Settlement Certificate No. Z-2869305, Sept. 22, 1994. At the time of the events in the instant case, SSA was a component of the Department of Health and Human Services.

aware that reassignment at this time will require a substantial personal financial expenditure which further evidences the urgency of my wife's health problems."

By memorandum, dated June 2, 1992, the Acting Chief ALJ stated that he could not recommend Judge Maram's reassignment to any of the Hearing Offices in Florida. He stated: "In reassigning ALJ's our primary concern is to maintain a balance between our workload and resources by considering the effect of a transfer on both the gaining and losing HOs [Hearing Offices]." However, he was also informed that his request would be kept on file in the event that ALJ's should be needed for Hearing Offices in Florida in the future.

By memorandum to the Acting Commissioner of Social Security, dated November 24, 1992, the Deputy Commissioner for Programs requested approval for the reassignment of 16 ALJs, including Judge Maram. Only one ALJ (another person) was to be paid relocation expenses. The Deputy Commissioner proposed to transfer Judge Maram to the Hearing Office in Tampa, Florida, and to transfer an ALJ in Alexandria, Louisiana, to Dallas, to replace him. Both the Dallas and Tampa Hearing Offices were in need of additional ALJs to handle current and expected workloads. Approval was granted on December 11, 1992.

By memorandum to the Regional Chief ALJ, dated February 9, 1993, Judge Maram requested a determination of his eligibility for relocation expenses incident to his reassignment. He stated that he was "fully prepared to accept a sizeable loss" on the sale of his Dallas residence and that he would relocate to the Tampa Hearing Office whether or not he could be reimbursed for his relocation expenses. He did not receive any reply before he moved, and he reported for duty at the Tampa Hearing Office on May 3, 1993.

By memorandum, dated July 30, 1993, the Acting Chief ALJ denied the request for relocation expenses because he determined that Judge Maram's transfer was not in the interest of the government on the rationale that it was primarily for the convenience or benefit of Judge Maram and at his request. The memorandum also noted that Judge Maram's transfer entailed moving another ALJ to his duty station.

Based on the foregoing facts, the administrative report of the SSA, concludes that:

"Judge Maram's transfer was not the result of a solicitation request by the agency; it was a result of his May 29, 1992, request. The basis for transferring him was primarily because of his expressed hardship. Concurrently with his transfer, the agency transferred two experienced Judges into the Dallas (North) HO; thus demonstrating that the office he transferred from was in need of judges, as was the office to which he transferred.

.

"5 U.S.C. [§]5724(h) specifically requires that, `When a transfer is made primarily for the convenience or benefit of the employee . . . or at his request, his expenses may not be allowed or paid from Government funds.'"²

In his appeal from our Claims Group's decision denying his claim, Judge Maram contends that his transfer was in the interest of the government, and thus not primarily for his convenience or benefit. He characterizes the survey of interest concerning transfers, dated October 22, 1991, as a management-initiated solicitation or vacancy announcement. He claims that his transfer was in the interest of the government since he was selected for transfer based upon the SSA's evaluation of workload needs and resources. Thus, he contends that the SSA's determination to deny him relocation expenses was arbitrary, capricious, and clearly erroneous.

Reimbursement of an employee's relocation expenses is conditioned upon a determination that the transfer is in the interest of the government, and not primarily for the convenience or benefit of the employee, or at the employee's request. See 5 U.S.C. § 5724(h) (1994); 41 C.F.R. § 302-1.3(a)(1)(i) (1994). The determination of whether a transfer is in the interest of the government or primarily for the convenience of the employee is a matter within the discretion of the employing agency, and we will not overturn an agency's determination unless it is arbitrary, capricious or clearly erroneous under the facts of the case. Julia R. Lovorn, 67 Comp. Gen. 392 (1988).

We have carefully examined the record in this case. We note particularly that the initial survey of interest on October 22, 1991, expressly stated that funds were severely limited and that an ALJ "should designate only those locations to which you would be willing to relocate at your own expense." Furthermore, the memorandum of November 24, 1992, requesting approval for the relocation of 16 ALJs (including Maram) stated that only one ALJ would be paid relocation expenses and that the others (including Maram) had agreed to absorb those expenses. After having accepted the transfer to Tampa without authorization of expenses, Judge Maram raised the question of his eligibility for relocation expenses on February 9, 1993, but reiterated that he ". . . will relocate to the Tampa Hearing Office regardless of relocation allowances." Finally, and most persuasively, the agency had to transfer another ALJ into the Dallas office to take Judge Maram's place. This was done solely because of Judge Maram's expressed hardship.

²See administrative report at 3, accompanied by SSA's cover letter, dated July 1, 1994. [Emphasis in original.]

We conclude that the SSA's determination to deny Judge Maram's claim for relocation expenses cannot be said to be arbitrary, capricious or clearly erroneous. There is ample evidence in the record on the basis of which the SSA could reasonably conclude, as it did, that Judge Maram's transfer was primarily for his own convenience and at his own request.

Where a transfer has been determined by an agency to be in the government's interest, the fact that the transfer also serves the employee's personal needs does not preclude allowance of otherwise proper expenses, see e.g., Elender C. Hill, B-222905, Mar. 30, 1987. In this case, however, the agency has not reached a determination that the transfer was in the government's interest. Thus the rule in Elender C. Hill does not apply here.

We note that as a general rule, we have sustained an agency's denial of relocation expenses where the transfers in question were lateral transfers to positions without greater promotion potential, even where the transfers are the result of a vacancy announcement. See e.g., Julia R. Lovorn, supra, and cases cited therein. See also John C. Eastman, B-246538.4, Mar. 18, 1994, reconsidering and affirming B-246538.2, Jan. 27, 1993.

Accordingly, we affirm our Claims Group's denial of Judge Maram's claim.

/s/Seymour Efros
for Robert P. Murphy
General Counsel