

DECISION

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

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FILE: B-206011

DATE: May 5, 1982

MATTER OF: Julie-Anna T. Tom

DIGEST: Transferred employee's entitlement to relocation expenses depends upon determination that transfer is not primarily for convenience or benefit of employee and GAO will not disturb agency determination unless clearly erroneous, arbitrary, or capricious. Thus, agency determination to deny relocation expenses to employee who transferred from Hawaii to Virginia is sustained where agency's determination that transfer was for employee's own convenience was based on fact that employee voluntarily transferred to accept position with identical title, grade, and potential for promotion. Neither fact of competitive selection to position nor erroneous advice as to relocation entitlements is basis to overturn agency determination.

Mr. Thomas N. Lyall, an authorized certifying officer of the Internal Revenue Service, requests an advance decision regarding whether Ms. Julie-Anna T. Tom is entitled to relocation expenses incident to her transfer from Hawaii to Virginia. Consistent with his responsibility and authority, the appropriate official of the Internal Revenue Service determined that the transfer was primarily for the employee's benefit. Since we conclude that this determination was not clearly erroneous, arbitrary or capricious, the claimant is not entitled to relocation expenses.

While on leave in Virginia, Ms. Tom, a GS-12, Revenue Officer, in Honolulu, Hawaii, became aware of an opening for a GS-12, Revenue Officer, in Baileys Crossroads, Virginia. The position was listed in a vacancy announcement and, under a labor-management agreement, the applicants were to be rated and ranked. In September 1981, Ms. Tom applied for the position in Baileys Crossroads and she was competitively selected. Upon selection, she was told by the Servicing Personnel Office (Richmond District) that she would be authorized relocation expenses.

Ms. Tom's transfer was effective on October 18, 1981. It was subsequently determined that Ms. Tom's relocation expenses had not been approved by the Mid-Atlantic Regional Commissioner as required by the agency's internal regulations. Specifically, paragraph 6 of the "Regional Travel Management Guidelines For FY 1981" requires all lateral reassignments involving relocation expenses to be approved by the Regional Commissioner before the individual selected is notified.

The Regional Commissioner then reviewed the circumstances regarding the claimant's transfer. Having determined that Ms. Tom's transfer was for her own convenience and not in the best interest of the Government, the Regional Commissioner denied relocation expenses. In reaching this conclusion, he considered, among other things, that Ms. Tom assumed her new position as the result of a lateral transfer within the same agency and that the new position had no greater potential for promotion than the like-position she had held in Hawaii. Essentially, he determined that the need for Revenue Officers with Ms. Tom's skills was equal in both the Virginia and Hawaii offices and that the ability to fill the positions at each office was similar. Thus, when Ms. Tom took the position in Virginia, her action merely shifted the vacancy from Virginia to Hawaii.

The certifying officer asks if the determination of the Mid-Atlantic Regional Commissioner not to allow relocation expenses is binding in view of the competitive selection process used in filling the position. His basic question is whether this selection process is by its very nature sufficient to have the transfer considered to be in the best interest of the Government.

As a general rule, there is no automatic entitlement to reimbursement of travel and relocation expenses upon an employee's change of station. Instead reimbursement of such expenses under 5 U.S.C. §§ 5724 and 5724a is conditioned upon a determination by the head of the agency concerned or his designee that the transfer is in the interest of the Government and is not primarily for the convenience or benefit of the employee. Matter of Caven, B-193666, August 26, 1979.

Here, the record supports the administrative determination by the designee of the agency head that Ms. Tom's transfer was for her benefit and convenience and not the interest of the Government. Thus, we are bound to abide by such a determination since we will not overturn an agency's determination in the absence of a showing that the determination was clearly erroneous, arbitrary, or capricious. Matter of Girard, B-199943, August 4, 1981, and cases cited therein. In Ms. Tom's case the fact that the position to which she transferred was one filled by competitive selection does not provide a basis for us to overturn the agency's determination that the transfer was primarily for her benefit. 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 an 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. See Matter of Girard, B-199943, August 4, 1981; compare Matter of Platt-Reconsideration, 61 Comp. Gen. _____, B-198761, December 23, 1981.

Thus, the agency's determination reached by the Regional Commissioner in accord with the internal regulations of the agency, is binding here, even though the claimant was erroneously advised that she would receive relocation expenses. See Matter of Fernald, B-189201, July 25, 1977. Accordingly, the agency's determination not to pay relocation expenses is sustained.


Acting Comptroller General
of the United States