

DECISION

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

FILE: B-219047

DATE: April 24, 1986

MATTER OF:

DIGEST:

The employee is not entitled to relocation benefits where the employing agency properly exercised its discretion in determining that the employee's lateral transfer at the same grade and salary was not primarily in the interest of the Government. The employee applied and was competitively selected for the transfer under a vacancy announcement notifying applicants that a lateral transfer would preclude reimbursement of relocation benefits unless considerations related to labor market conditions or other factors resulted in a determination that the lateral transfer was in the interest of the Government. The agency's decision under this standard is not overturned unless clearly unreasonable.

We are asked to decide whether Mr. _____, an employee of the Veterans Administration, who was competitively selected for reassignment and transfer, is entitled to relocation expenses.^{1/} Since the employee's transfer was to a position at the same grade level, we find that the employing office properly determined that the transfer was primarily for the convenience of the employee rather than in the interest of the Government and, therefore, he is not entitled to reimbursement of relocation expenses.

Background

Mr. _____ was employed as a Vocational Rehabilitation Specialist, grade level GS-11, at the Veterans Administration Regional Office, Cleveland, Ohio, when he

^{1/} The Director, Office of Budget and Finance, Veterans Administration, Washington, D.C., requested this decision.

035251

received notice on March 31, 1983, that he had been selected for a similar position at the same grade and salary at the Veterans Administration Medical and Regional Office Center, Wilmington, Delaware. He had applied for the position in response to a job vacancy announcement issued March 16, 1983, indicating travel expenses were authorized.

However, the intra-agency transfer request issued following his selection was canceled. The position was readvertised nationwide by vacancy announcement of April 18, 1983, advising that the March 16 announcement had been canceled and that applicants who had filed under it should reapply. The April 18 announcement stated in part:

"Vacancy announcement 83-06 is extended nation wide for vocational rehabilitation specialist GS-1715-9 with promotion potential to GS-11 or GS-1715-11. A reassignment or demotion eligible who is selected at grade level GS-11 will be required to transfer at his/her personal expense and will not be entitled to reimbursement by the Government for relocation expenses unless labor market conditions, program requirements, cost effectiveness, consideration[s] indicate that the transfer will benefit the Government."

In response to this announcement, Mr. _____ reapplied, and was selected for the position, again at the GS-11 grade level and salary of the position he held in Cleveland. Since his was a lateral transfer to a position at the same grade and salary, he was on notice that he would not receive relocation expenses unless, because of considerations relating to labor market conditions, program requirements or cost effectiveness, the transfer was determined to be in the interest of the Government.

Mr. _____ appealed from the denial of his claim for relocation benefits based primarily on the fact that other employees who received lateral transfers were authorized relocation expenses. The Veterans Administration Field Director, Eastern Region, responded stating that the receipt of relocation expenses by other employees who had been transferred laterally was immaterial. He explained that

every Veterans Administration facility must evaluate whether there are sufficient qualified candidates from the local labor market and, if there are not, the vacancy announcement may permit relocation expenses even if the employee selected is reassigned by lateral transfer or at a lower grade than the employee's previous position. Apparently, no such determination was made with respect to the vacancy in Wilmington for which Mr. [redacted] applied, and his claim was denied by the Veterans Administration. Mr. [redacted] has appealed from that denial.

Discussion

An employee is entitled to relocation expenses only if the agency determines that the transfer is in the interest of the Government and not primarily for the convenience or benefit of the employee. 5 U.S.C. §§ 5724(a) and (h), and Federal Travel Regulations, para. 2-1.3 (Supp. 1, September 28, 1981), incorp. by ref., 41 C.F.R. § 101-7.003 (1984). Unless agency regulations otherwise limit relocation expenses, an employee who transfers upon selection for promotion under a merit promotion plan is considered to have been recruited for the position so that his transfer is in the interest of the Government. 59 Comp. Gen. 699 (1980), reconsidered 61 Comp. Gen. 156 (1981). On the other hand, employees often transfer laterally to a position at the same grade as their previous position without greater promotion potential. In such cases the agency must determine, based on the facts involved, whether the transfer is primarily in the interest of the Government or is primarily for the employee's benefit or convenience.

In recognition of the authority of the employing agency to determine whether a transfer is primarily in the interest of the Government or primarily for the convenience or benefit of the employee, we will not overturn the agency's determination unless it is arbitrary, capricious, or clearly erroneous under the facts of the case. B-206011, May 3, 1982. An employee's transfer may be determined to be primarily in the interest of the Government even though the transfer also serves personal needs. Nevertheless, the fact that the employee was transferred to fill a vacant position and had been competitively selected does not require a determination that the transfer was primarily in

B-219047

the Government's interest.
May 15, 1984.

, B-214881,

In cases such as this where an employee's transfer did not involve a promotion but was a lateral reassignment to a position having no greater promotion potential, we have sustained the agency's determination that the transfer was for the employee's convenience and not in the interest of the Government. See 59 Comp. Gen. 699, 701, and cases cited therein: , B-199943, August 4, 1981; and B-216652, May 6, 1985.

We further note that Mr. [redacted] was notified by the April 18 vacancy announcement that a lateral transfer such as his would not entitle him to relocation benefits unless on the basis of the factors mentioned--labor market conditions, program requirements, and cost-effectiveness--the transfer was determined to be in the interest of the Government. The need to weigh these factors in individual cases explains how certain employees undergoing lateral transfers could properly be reimbursed relocation expenses. Insufficient candidates in the local labor market might require a greater inducement for applicants outside the area to relocate at Government expense. Evidently this circumstance did not arise under the vacancy announcement involved in Mr. [redacted] selection and transfer. In any event, we have no evidence that the agency's determination in his case was clearly unreasonable.

For the above reasons we sustain the disallowance of relocation expenses.

for *Shilton J. Auster*
Comptroller General
of the United States