



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: John J. McCracken

File: B-241216.2

Date: August 14, 1991

DIGEST

An agency that permits an employee to transfer non-competitively to a position at a lower grade in order to accommodate the employee's desire to relocate, properly required the employee to pay his own relocation expenses, since the transfer was primarily for the employee's benefit.

DECISION

Mr. John J. McCracken, an employee of the Internal Revenue Service (IRS), requests reconsideration of our denial of his claim for reimbursement of his relocation expenses incurred pursuant to his transfer from Helena, Montana, to a position involving a voluntary demotion in Pocatello, Idaho, incident to a permanent change of station. That disallowance was based on the fact that Mr. McCracken accepted a non-competitive reassignment to a down-graded position. We concluded that his relocation was primarily for his own convenience or benefit. For the reasons set forth below, we affirm our prior decision, John J. McCracken, B-241216, Feb. 14, 1991.

As background, section 5724(h) of title 5, United States Code, prohibits payment where a transfer is made primarily for the convenience or benefit of an employee or at the employee's request. See also paragraph 2-1.3a of the Federal Travel Regulations (FTR).^{1/} Agencies have broad discretion to determine whether a particular transfer is in the interest of the government or for the benefit of the employee. Dante P. Fontanella, B-184251, July 30, 1975. When an agency acts under that authority, we do not disturb its determination unless it is arbitrary, capricious, or clearly erroneous. Marianne Poarch Meehan, B-211572, Aug. 1, 1983, and decisions cited. Further, as we pointed out in our decision, where an employee's relocation involves a lateral transfer or a down-grade to a position of no greater promotion potential than the old position held, or where the new position reassignment did

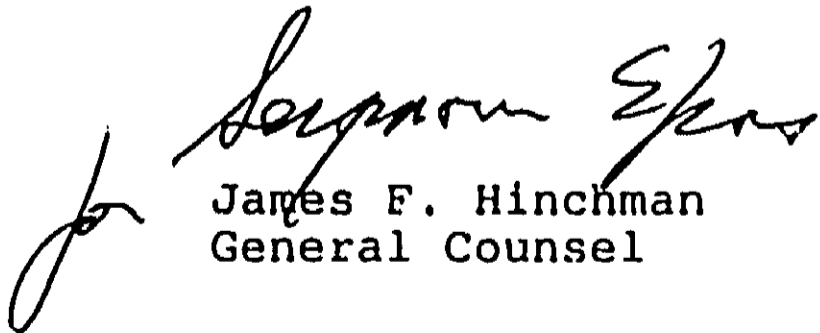
^{1/} Incorp. by ref., 41 C.F.R. § 101-7.003 (1987).

not result from competitive selection under a vacancy announcement, an agency may conclude that the transfer is primarily for the benefit of the employee and deny reimbursement. Julia R. Lovorn, 67 Comp. Gen. 392 (1988).

In his request for reconsideration, Mr. McCracken argues that not all non-competitive transfers are primarily for the benefit of the employee. As an example, he cites an agreement between the National Treasury Employees Union and IRS,^{2/} whereby the agency agrees to provide relocation contractor services for an employee who is transferred for the benefit of the government. Examples of such transfers cited in the agreement include a non-competitive reassignment where sufficient qualified candidates for the position are not available locally or where the person selected has unique capabilities not easily found in the area to which the move is being made. Essentially, Mr. McCracken contends that his transfer was made for a similar reason and that, therefore, it should be regarded as having been made primarily for the benefit of the government rather than for his primary benefit.

We do not agree with Mr. McCracken that his transfer was primarily for the benefit of IRS. As the agency points out, his transfer was initiated as an accommodation to Mr. McCracken's desire to return to Idaho. If he had not requested the transfer, the agency states, it would have filled the vacancy through a competitive selection process. Hence, there is no reason to conclude that Mr. McCracken's non-competitive transfer was made primarily to benefit the IRS. In fact, the agency states that it never agreed to pay Mr. McCracken's relocation expenses incident to the transfer for exactly the reason that the transfer was initiated at his request, not the agency's. We also note that Mr. McCracken confirmed in writing before the relocation took place that he understood that moving expenses were not authorized and that he was willing to personally incur those expenses.

We affirm our prior decision.



James F. Hinchman
General Counsel

^{2/} Reprinted as Exhibit 14 of the Relocation Handbook in the Internal Revenue Manual.