

# Board of Contract Appeals

General Services Administration  
Washington, D.C. 20405

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January 23, 2002

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GSBCA 15685-RELO

In the Matter of GREGORY M. CHAKLOS

Gregory M. Chaklos, McMurray, PA, Claimant.

Donald L. Smith, Jr., Assistant Counsel, Office of Counsel, Columbus Region, Defense Logistics Agency, Columbus, OH, appearing for Defense Logistics Agency.

**DeGRAFF**, Board Judge.

Even in the absence of valid orders authorizing reimbursement of relocation expenses, an employee is eligible to be reimbursed if a change of official station is authorized or approved by the head of an agency or other designated official, and if the employee transfers from one official duty station to another for permanent duty, provided that the transfer is in the interest of the Government and not primarily for the benefit of the employee.

## Background

In late October 2000, the Defense Logistics Agency (DLA) Human Resources Operations Center issued a job announcement for positions at the Defense Supply Center in Columbus, Ohio (DSCC). The announcement provided an opportunity to obtain a merit promotion to a higher pay grade for Gregory M. Chaklos, an employee of the Department of the Treasury in Pennsylvania. Mr. Chaklos submitted an application in response to the announcement. The announcement stated that "PCS" was "Not Authorized," which the agency and Mr. Chaklos read to mean that reimbursement of relocation expenses incident to a permanent change of station (PCS) was not authorized.

On May 8, 2001, DSCC's Land Based Weapons Systems Group selected Mr. Chaklos to fill a vacancy. On May 10, the agency's personnel office orally offered the position to Mr. Chaklos, and Mr. Chaklos orally accepted the offer. The personnel office confirmed the offer in writing that same day. The team leader for whom Mr. Chaklos would be working in the Land Based Weapons Systems Group determined that it would be in the agency's best interest to bring in an employee from outside the office, and asked the Deputy Director of the Land Based Weapons Systems Group if he would consider reimbursing Mr. Chaklos for relocation expenses. The Deputy Director responded that he would agree to reimburse

Mr. Chaklos for his relocation expenses, if Mr. Chaklos asked to be reimbursed. The team leader provided this information to the personnel office.

On May 12, Mr. Chaklos wrote to the personnel office and said that he accepted the employment offer, "with all the normal statutory and regulatory rights and benefits associated with inter-agency transfer and placement of career status employees . . . ." On May 14, Mr. Chaklos wrote to the personnel office again and asked for PCS benefits such as reimbursement for a house hunting trip, temporary quarters subsistence expenses, and other miscellaneous expenses. The personnel office informed the team leader that Mr. Chaklos had asked to be reimbursed for his relocation expenses, and the team leader told the personnel office to prepare the necessary authorization.

The personnel office asked the DLA Human Resources Operations Center to contact Mr. Chaklos regarding a PCS. On May 30, the operations center sent Mr. Chaklos two forms that he needed to complete before it could begin preparing his PCS orders. The operations center received the completed forms from Mr. Chaklos on June 1, 2001, and then prepared PCS orders for Mr. Chaklos. The orders included what the agency calls "boilerplate language" stating that his travel was for the convenience of the Government, and authorized reimbursement of the expenses of a house hunting trip, travel, temporary quarters subsistence, and miscellaneous items. The operations center sent the orders to the personnel office. If the agency had followed its usual procedures, the orders would have been given to a program/resource analyst who would have provided a travel order number and an issue date for the travel orders, taken the orders to the approving official for signature, and carried the orders to the comptroller's office. The comptroller's office would have certified that funds were available, applied that office's stamp to the orders, and had the orders signed by the order-issuing/authenticating official. Then the orders would have been forwarded to the person responsible for the recruitment, who would have forwarded the orders to Mr. Chaklos. For some reason, the agency did not follow its usual procedures when it dealt with Mr. Chaklos's orders. Although his orders were signed by the approving official, they were never given to the program/resource analyst. They were never assigned a travel order number. They were never dated. The comptroller never certified that funds were available and never stamped the orders. The orders were never signed by an order-issuing/authenticating official. Even though the agency did not follow its procedures regarding the preparation and issuance of travel orders, Mr. Chaklos received a copy of the orders from the personnel office.

Treasury completed a Standard Form 50, "Notification of Personnel Action," when Mr. Chaklos left Treasury to work for DSCC. The form listed "termination" as the nature of the action that required Treasury to generate the form. The form went on to say that Mr. Chaklos had "accepted employment in another federal agency," and that the "reason for termination" was that he was "employed by another federal agency." Mr. Chaklos asked Treasury to amend the form to show that he had "transferred" to DSCC. Treasury replied that its use of the word "termination" was the correct term to use because he accepted a position with another federal agency, without a break in service. Treasury explained that the Office of Personnel Management's (OPM's) Guide to Processing Personnel Actions states that "termination" is the appropriate term to use if an employee separates from an agency "[b]ecause employee has accepted a position in another Federal agency without a break in service" and "[e]mployee accepts job at a higher grade." Mr. Chaklos went from Treasury

to DSCC without a break in service, and his job at DSCC was at a higher grade than his job at Treasury.

Mr. Chaklos reported for work at DSCC on June 4, 2001. On approximately July 9, Mr. Chaklos hand-carried a travel voucher to the Defense Finance and Accounting Service (DFAS). In the voucher, Mr. Chaklos asked to be reimbursed for a house hunting trip that he took to Columbus, travel expenses from Pennsylvania to Columbus, several days of temporary quarters subsistence expenses, travel expenses from his temporary quarters to his permanent quarters, and a miscellaneous expense allowance. Mr. Chaklos attached to his voucher a copy of the PCS orders described above. DFAS recognized that the orders were incomplete and contacted an agency program/resource analyst for advice. The program/resource analyst did not remember ever seeing the orders, and she forwarded them to the agency's legal office for review.

The legal office advised Mr. Chaklos that he was not eligible for any PCS benefits because he had been appointed to a temporary position. Mr. Chaklos asked the agency's personnel office to review his claim. The personnel office decided that Mr. Chaklos was not eligible for any PCS benefits because the job announcement stated that reimbursement of relocation expenses was not authorized, and because Mr. Chaklos was hired as a temporary employee and was not, therefore, eligible for PCS benefits. The personnel office said that it realized that PCS orders had been issued to Mr. Chaklos, but said that the orders were improperly issued because Mr. Chaklos was not eligible for PCS benefits. The personnel office also noted that the orders were incomplete. Mr. Chaklos asks us to review the agency's decision to deny his claim.

### Discussion

The statutory and regulatory provisions relevant to Mr. Chaklos's claim provide that an employee is eligible to be reimbursed for relocation expenses if a change of official station is authorized or approved by the head of an agency or other designated official, and if the employee transfers from one official duty station to another for permanent duty, provided that the transfer is in the interest of the Government and not primarily for the benefit of the employee. 5 U.S.C. §§ 5724, 5724a (2000); 41 CFR 302-1.3(a) (2001). Mr. Chaklos contends that he satisfies all of the statutory and regulatory conditions for reimbursement. The agency contends that Mr. Chaklos is not eligible to be reimbursed because he did not transfer from one official duty station to another for permanent duty, because his transfer was not in the interest of the Government, and because the agency never issued valid PCS orders. Below, we examine Mr. Chaklos's position in light of the agency's contentions.

DSCC says that Mr. Chaklos did not transfer from one official duty station to another, because the Standard Form 50 prepared by Treasury says that his employment with Treasury was terminated, and does not say that he transferred to DSCC. We disagree with DSCC, for two reasons. First, the Standard Form 50 was prepared in connection with the administration of civil service statutes and regulations, and not in connection with the administration of the statutes and regulations that govern the reimbursement of relocation expenses. As the Comptroller General noted, the word "transfer" could very well have one meaning when used in a civil service context, and another meaning when used in the context of determining an

employee's relocation benefits.<sup>1</sup> 27 Comp. Gen. 757 (1948). Second, OPM's Guide to Processing Personnel Actions explains that "termination" is the appropriate term to use when an employee leaves one agency in order to accept a position in another federal agency without a break in service, at a higher grade. The use of the word "termination" does not, therefore, establish that Mr. Chaklos's federal employment was terminated when he left Treasury. Instead, the use of the term establishes that he was leaving Treasury in order to accept a position with DSCC. Thus, the language on the Standard Form 50 does not establish that Mr. Chaklos failed to transfer from one official duty station to another.

The statutes and regulations that govern relocation benefits do not define the word "transfer." A long line of Comptroller General decisions, however, established that when the word "transfer" is used in statutes and regulations governing relocation expenses, it means "a change of official station without a break in service of one workday or more." Gregory A. Akers, B-197771 (Aug. 11, 1981) (citing cases). An "official station" is "the building or other place where the . . . employee regularly reports for duty." 41 CFR 302-1.4(k). When Mr. Chaklos left Treasury and reported for work with DSCC, his official station changed from Pennsylvania to Ohio, and he had no break in service between his employment with Treasury and his employment with DSCC. Therefore, Mr. Chaklos fulfills the requirement that he must have transferred from one official duty station to another.

DSCC contends that Mr. Chaklos's appointment is temporary, which DSCC says means that he did not transfer from one official station to another for permanent duty. Mr. Chaklos contends that his appointment is permanent. For purposes of resolving Mr. Chaklos's claim, it makes no difference whether his appointment is temporary or permanent. As the Comptroller General explained several times, the words "transferred from one official station to another for permanent duty" refer to "a change in the permanent duty station of an employee without a break in service and not to the tenure of his appointment." Thomas N. Wikstrom, 59 Comp. Gen. 374, 375 (1980); Mary M. Rydquist, B-164051 (July 10, 1968); 27 Comp. Gen. 757 (1948); 22 Comp. Gen. 219 (1942). In Paul Henderson, GSBCA 15480-RELO, 01-2 BCA ¶ 31,501, we agreed with the Comptroller General's logic when we stated that "[s]tatute and regulation make no distinction between temporary and permanent positions for determining eligibility for relocation entitlements." 01-2 BCA at 155,566. Thus, even if DSCC is correct and Mr. Chaklos's appointment is temporary, he fulfills the requirement that he must have transferred for permanent duty.

DSCC says that Mr. Chaklos's relocation was primarily for his benefit, and was not in the interest of the Government, because Mr. Chaklos actively pursued the position with DSCC by responding to the job announcement. If an employee makes a lateral transfer to a position without a greater promotion potential, or if an employee initiates a transfer by asking to move from one official duty station to another, an agency can rightfully conclude that the transfer was primarily for the benefit of the employee and not in the interest of the Government. The fact that an employee applies for a merit promotion vacancy, however, "does not change the fundamental truth that the purpose and intent of merit promotion is to serve the Government's interest by obtaining the best qualified persons for vacant positions." Eugene R. Platt, 59 Comp. Gen. 699, 702 (1980), aff'd on reconsideration, 61 Comp. Gen.

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<sup>1</sup> Until July 1996, the Comptroller General resolved claims for relocation expenses.

156 (1981). Thus, the fact that Mr. Chaklos responded to the agency's merit promotion job announcement does not establish that the relocation was primarily for his benefit and not in the interest of the Government.

Although Mr. Chaklos's response to the merit promotion job announcement does not establish that his transfer was primarily for his benefit, neither does it establish that his transfer was in the interest of the Government. Even when selections are made pursuant to merit promotion procedures, there can be situations in which it would not be in the Government's interest to transfer an employee. For example, if the local labor market will provide enough qualified applicants to fill a vacancy, an agency can decide that transferring an employee from outside the local market is not in the agency's interest. Agencies may issue regulations setting out the factors to be considered in deciding whether a transfer pursuant to a vacancy announcement would be in the interest of the Government. If an agency decides that a transfer will not be in its interest, it must clearly communicate its decision to applicants for the position by, for example, stating in the job announcement that it will not reimburse relocation expenses. See Ross K. Richardson, GSBCA 15286-RELO, 00-2 BCA ¶ 31,331.

DSCC says that Mr. Chaklos's relocation was not in the interest of the Government because the Department of Defense Joint Travel Regulations (JTR) provide that the reimbursement of relocation expenses does not have to be authorized when circumstances show that a transfer would not be in the Government's interest, JTR C4100-A.2, and the job announcement to which Mr. Chaklos responded stated that reimbursement of relocation expenses was not authorized. We agree with DSCC that the statement in the job announcement establishes that when DSCC issued the announcement, it determined that an applicant's transfer would not be in the Government's interest. We also agree with DSCC that the statement in the job announcement put Mr. Chaklos and other potential applicants on notice of the agency's determination. Further, we agree with DSCC that the determination of whether a transfer is in the interest of the Government is a matter within the discretion of the employing agency. Platt; Earl G. Gongloff, GSBCA 13860-RELO, 97-1 BCA ¶ 28,792; Darrel M. Thrasher, B-259960 (Sept. 21, 1995), reconsideration denied, GSBCA 13968-RELO, 97-2 BCA ¶ 29,214. Mr. Chaklos has not challenged the determination that DSCC made when it issued the job announcement so we conclude that DSCC did not abuse its discretion when it determined, at that time, that it would not be in the Government's interest to transfer an employee to fill one of the vacancies covered by the announcement.

If DSCC had adhered to the determination that it made when it issued the job announcement, as did the agencies in Platt, Gongloff, and Thrasher, we would conclude that Mr. Chaklos's transfer was not in the interest of the Government. DSCC, however, reevaluated and revised its initial determination.<sup>2</sup> After DSCC selected Mr. Chaklos to fill a vacancy, his team leader determined that it would be in the agency's best interest to bring Mr. Chaklos to DSCC, and the Deputy Director of the Land Based Weapons Systems Group agreed to reimburse Mr. Chaklos for his relocation expenses, if Mr. Chaklos asked to be

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<sup>2</sup> DSCC says that such a revision is unfair to those who might otherwise have applied for one of the vacant positions. We find nothing in the statutes and regulations, however, that deprives DSCC of the flexibility to determine that a particular transfer would be in its interest, even if a job announcement says that relocation expenses would not be reimbursed.

reimbursed. When Mr. Chaklos asked to be reimbursed, the DLA Human Resources Operations Center sent Mr. Chaklos two forms that he needed to complete before it could begin preparing his PCS orders. The operations center received the completed forms and then prepared PCS orders for Mr. Chaklos. Although the orders were not properly processed by DSCC, the personnel office sent a copy of the orders to Mr. Chaklos. All of these actions by DSCC establish that after it issued the job announcement, it exercised its discretion and determined that Mr. Chaklos's relocation was in the interest of the Government. It would not be reasonable for DSCC to reverse this determination, now that Mr. Chaklos has transferred to Ohio. Riyoji Funai, GSBCA 15452-RELO, 01-1 BCA ¶ 31,342; Bart J. Dubinsky, GSBCA 14546-RELO, 98-2 BCA ¶ 29,840.

Finally, DSCC contends that Mr. Chaklos cannot be reimbursed for relocation expenses because his PCS orders are incomplete, invalid, and were never issued. Clearly, DSCC mishandled Mr. Chaklos's PCS orders and, as a result, the orders are incomplete. In Funai, we decided that incomplete PCS orders were valid, because the only item missing was an accounting citation. The PCS orders here, however, do not contain a travel order number, are not dated, and are not signed by an order-issuing/authenticating official. This is not a case in which the orders have the appearance of being valid, competent orders, and need to be amended to correct an error or an inadvertent omission. The incomplete nature of these PCS orders is patently obvious, and we agree with DSCC that the missing items are significant enough to render the orders invalid.

Even in the absence of valid PCS orders, DSCC is required by statute to reimburse Mr. Chaklos for some relocation expenses (travel, transporting household goods, real estate transactions, miscellaneous expenses), and DSCC should review Mr. Chaklos's claim and determine to what extent he should be reimbursed for these items, in keeping with applicable regulations. In addition, DSCC has the discretion to reimburse Mr. Chaklos for other relocation expenses (house hunting trip, temporary quarters subsistence expenses, moving a privately owned vehicle to the new duty station) and may, if it wishes, reimburse him for these items, as allowed by applicable regulations. 5 U.S.C. §§ 5724, 5724a, 5727; Dubinsky; Richardson.

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MARTHA H. DeGRAFF  
Board Judge