

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

February 6, 2006

GSBCA 16738-RELO

In the Matter of JACQUELINE LAZÚ LABOY

Jacqueline Lazú Laboy, Humacao, PR, Claimant.

Kristine M. Chadwick, Director, Financial Management Division, Domestic Debt, Claims and Financial Management Staff, Farm and Foreign Agricultural Service, Farm Service Agency, Department of Agriculture, Washington, DC, appearing for Department of Agriculture.

HYATT, Board Judge.

Claimant, Jacqueline Lazú Laboy, is a farm loan manager and supervisory loan specialist employed by the Farm and Foreign Agricultural Service, which is part of the Farm Service Agency within the United States Department of Agriculture (USDA). In April 2005, Ms. Lazú Laboy was notified that as of May 15, 2005, she would be reassigned from her old duty station in Caguas, Puerto Rico, to the field office in Barranquitas, Puerto Rico. This reassignment included some supervisory responsibility (shared management) for the Corozal, Puerto Rico, field office. The notice stated that the directed reassignment was due to the need for alternative programmatic operating and staffing strategies as a result of budgetary and staffing constraints.

Ms. Lazú Laboy resides in Humacao, Puerto Rico. According to claimant, her commute from her residence to the old duty station in Caguas was eighteen miles. Her new commute to the duty station in Barranquitas is forty-six miles, and the distance from her home to Corozal, to perform her shared management duties, is fifty-one miles. Caguas is

located between claimant's home in Humacao and her new duty station in Barranquitas. Ms. Lazú Laboy states that her old commute to Caguas took forty-five minutes, the time required for her to commute to Barranquitas is an hour and forty-five minutes, and the trip to Corozal from her residence takes two hours and fifteen minutes.¹

Following notice of her reassignment, Ms. Lazú Laboy submitted a request for reimbursement of permanent change of station (PCS) expenses. In support of her request, she acknowledged that relocation benefits are not necessarily authorized when the new official duty station is less than fifty miles from the old official station, but noted that the reassignment had significantly impacted the time required to commute to and from work. She also pointed out that the added commute costs her the additional amount of \$30 per week in gasoline and \$14 in tolls per month, which she stated constitutes a financial hardship arising from the transfer.

The agency considered Ms. Lazú Laboy's request for relocation benefits and responded as follows:

As a general rule, exceptions are not made unless it is clearly demonstrated that the Agency would lose a key employee that could adversely compromise the continuity of program delivery or would adversely impact the recruitment and/or retention of specialized employees, such as those in hard-to-fill jobs. After a review of the facts surrounding your petition, it is our determination that the circumstances in this case do not justify an exception to the 50-mile rule.

Ms. Lazú Laboy has asked the Board to review this determination.

Discussion

The relevant provisions of the Federal Travel Regulation (FTR) are contained in 41 CFR 302-1.1(b) and 302-2.6 (2005). Section 302-1.1(b) defines who will be eligible to receive relocation expense allowances under the FTR and states that "an employee transferring in the interest of the Government from one agency or duty station to another for permanent duty" will "generally [be] eligible for relocation expenses allowances" providing that the "new duty

¹According to Mapquest, the trip from Humacao to Caguas is approximately twenty-one miles and takes twenty-four minutes; the commute to Barranquitas is about forty-seven miles and takes about an hour and four minutes.

station is at least 50 miles distant from [the] old duty station.” Section 302-2.6 provides that relocation expenses will generally not be reimbursed when the distance between the two duty stations is less than fifty miles, as is the case here. This section sets forth guidelines for the exercise of the agency’s discretion to authorize relocation benefits when the two duty stations are less than fifty miles apart:

On a case-by-case basis and having considered the following criteria, the head of [the] agency or designee may authorize reimbursement of relocation expenses of less than 50 miles when he/she determines that it is in the interest of the Government; and

(a) The one way commuting pattern between the old and new official station increases by at least 10 miles but no more than 50 miles; or

(b) There is an increase in the commuting time to the new official station; or

(c) A financial hardship is imposed due to increased commuting costs.

41 CFR 302-2.6.

Here, the agency considered Ms. Lazú Laboy’s request and decided it would not make an exception to the rule. The regulations leave this determination to the agency’s discretion. The Board has recognized, in a variety of contexts and specifically with respect to this provision of the FTR, that when the regulations vest discretion in the agency with respect to the authorization of particular relocation expenses, the agency’s judgment will not be disturbed unless the determination is arbitrary, capricious, or clearly erroneous. *Sherwood McIntyre*, GSBCA 16345-RELO, 04-2 BCA ¶ 32,687 (citing *Jeffrey R. Jenkins*, GSBCA

15339-RELO, 00-2 BCA ¶ 31,066; *Larry E. Olinger*, GSBCA 14566-RELO, 98-2 BCA ¶ 29,877). Nothing in the record before us shows that the agency has abused its discretion. Accordingly, the claim must be denied.

CATHERINE B. HYATT
Board Judge