

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

August 3, 2006

GSBCA 16832-RELO

In the Matter of LINDELL BAKER

Lindell Baker, Bozeman, MT, Claimant.

Jackie Lynch, Chief, Travel Management Section, U.S. Geological Survey, Department of the Interior, Reston, VA, appearing for Department of the Interior.

GOODMAN, Board Judge.

The Department of the Interior, U.S. Geological Survey (USGS or agency), has requested that this Board issue a decision pursuant to 31 U.S.C. § 3529 (2000) and Board Rule 502, 48 CFR 6105.2 (2005), advising whether the USGS should have paid relocation expenses to certain employees who voluntarily relocated several years ago and whether it would be proper for the agency to certify for payment any vouchers that may be submitted in the future by these employees for relocation expenses previously incurred.

Background

On November 27, 2002, the USGS Geography Discipline issued a memorandum (the memorandum) to employees to gather information about the level of employee interest in voluntarily relocating to several priority areas throughout the country to support the agency's overall strategy to implement a program known as The National Map and to support regional integrated science priorities.

The memorandum stated the agency's intention "[t]o give current employees the first chance to take advantage of this opportunity, and listed priority areas to which it was "inviting expressions of interest in relocating." Additionally, the memorandum emphasized

that “relocation at this time is by employee choice; travel transportation and relocation expenses will be the responsibility of the employee.”

The agency established a website through which interested employees could submit their personal information and rank their preference of designated cities where they would like to relocate. The employees also ranked themselves on various skill sets and knowledge. Forty-three employees responded. A team of managers reviewed and evaluated the requests, attempting to match employee relocation preferences and skills with staffing requirements by location. Interviews were conducted during March and April 2003. Fifteen employees eventually decided to relocate, and they were sent acceptance letters with an attachment requiring that they execute the following affirmation in accordance with the agency’s Personnel Bulletin No. 99-6:

I voluntarily request consideration for assignment to a position in another commuting area (or describe the particular position). I am making this request primarily for my personal convenience or benefit. I understand that, if selected, I will be responsible for all travel, transportation and relocation expenses associated with reporting for duty in that position.

The office continued to consider other case-by-case requests for relocation into calendar year 2004 in support of The National Map initiative. In August 2004, USGS formed the National Geospatial Programs Office (NGPO) within the Geospatial Information Office as a means to unify the various national geospatial activities for which the USGS has a leadership role and responsibility. In January 2005, the NGPO began consolidation of existing mapping centers and other geospatial production activities into the National Geospatial Technical Operations Center (NGTOC). The purpose of NGTOC is to support the NGPO’s mapping production and technology activities. On September 23, 2005, it was announced that NGTOC would be downsized by competitive sourcing and many employees would be losing jobs. Also, NGTOC would be located in Denver and only those in the local Denver commuting area would be eligible to compete for those jobs. All other NGTOC offices would be closed.

In October 2005, Mr. Lindell Baker, who had previously voluntarily relocated from Denver to Bozeman, Montana, in response to the memorandum, contacted his congressman. He stated that he had been treated unfairly, since he may lose his job due to the reorganization and competitive sourcing initiatives resulting from the establishment of the NGTOC in Denver, and would be out of pocket approximately \$10,000 in relocation costs. He states that initially USGS made it very clear through meetings and memoranda that it strongly recommended staff consider relocating to state offices to help the USGS build partnerships with state and local governments in support of the new digital National Map initiative. According to Mr. Baker, the agency represented that successful candidates who

relocated would have a much more secure future with the USGS during the implementation of future downsizing, and now it appears that this was not the case. Had he remained in Denver, he believed his position would not be at risk.

The agency anticipates that it may receive from Mr. Baker and other employees claims for reimbursement of relocation expenses incurred when they relocated in response to the memorandum. The USGS has asked this Board for an advance decision as to how to respond to such requests for reimbursement if they are received.

Discussion

The USGS asks that this Board render a decision advising whether it should have paid relocation expenses for all employees relocated who responded to the memorandum and, if so, which entitlements should have been paid. Also, USGS asks whether it should pay any vouchers submitted for relocation expenses by the employees who relocated. The agency makes this request for decision pursuant to Board Rule 502, which reads in relevant part:

(a) Request for decision.

(1) A disbursing or certifying official of an agency, or the head of an agency, may request from the Board a decision (referred to as a “Section 3529 decision”) on a question involving a payment the disbursing official or head of agency will make, or a voucher presented to a certifying official for certification, which concerns the following type of claim made against the United States by a federal civilian employee:

(i) A claim for reimbursement of expenses incurred while on official temporary duty travel; and

(ii) A claim for reimbursement of expenses incurred in connection with relocation to a new duty station.

As the rule states, this Board can only answer a question involving a payment which a disbursing official will make or a voucher that has been presented. As yet, no vouchers have been presented, but the agency anticipates that it will receive vouchers for payment of relocation expenses from employees such as Mr. Baker who relocated voluntarily several years ago. We can answer the question as to whether the agency should pay relocation expenses in response to vouchers presented in the future. To answer this question, we must examine the agency’s previous decision not to pay relocation expenses for those employees when they relocated.

Payment of relocation expenses is properly determined under 5 U.S.C. § 5724 (2000), which addresses the transfer of civilian federal employees from one duty station to another. That statute provides that specified travel and relocation expenses of an employee transferred in the interest of the Government will be reimbursed. *Id.* § 5724(a). However, “[w]hen a transfer is made primarily for the convenience or the benefit of an employee . . . or at his request, his expenses . . . may not be allowed or paid from Government funds.” *Id.* § 5724(h). The determination of whether a transfer is in the interest of the Government or for the benefit of the employee is for the employing agency to make. The agency’s determination will not be disturbed unless it is arbitrary, capricious, or clearly erroneous under the facts of the case. *McColgin v. United States*, 50 Fed. Cl. 506 (2001); *Timothy A. Burgess*, GSBCA 16725-RELO, 05-2 BCA ¶ 33,103; *Quentin B. McColgin*, GSBCA 14349-RELO, 98-1 BCA ¶ 29,599, *aff’d on reconsideration*, 98-1 BCA ¶ 29,664; *Steven D. Hanson*, GSBCA 14270-RELO, 97-2 BCA ¶ 29,314.

As in *Quentin B. McColgin*, the agency has furnished pertinent sections of its Personnel Bulletin No. 99-6 setting forth the criteria for its determination as to whether a transfer is primarily in the interest of the Government. This bulletin reads in pertinent part:

The term “voluntary transfer” means a transfer where management has selected an employee who has volunteered for the assignment. Voluntary assignments are either “primarily for the convenience and benefit of the employee or at his/her request” or “in the interest of the government.”

The term “primarily for the convenience and benefit of the employee or at his/her request” means a voluntary transfer that has resulted from either of the following:

1. Selection of an employee for transfer whose primary interest is in relocation, rather than placement in a specific position, and who has signed the following statement:

“I voluntarily request consideration for the assignment to a position in another commuting area (or describe the particular position). I am making the request voluntarily for my personal convenience or benefit. I understand that, if selected, I will be responsible for all travel, transportation and relocation expenses associated with reporting for duty in that position.”

Bureaus and Offices may require an individual to sign this statement when the individual submits an unsolicited application for placement consideration. An application in response to a vacancy announcement is not unsolicited.

2. Selection of an employee for transfer who has responded to a vacancy announcement that contains the following statement:

Travel, transportation and relocation expenses will not be paid by the Department. Any travel transportation and relocation expenses associated with reporting for duty in this position will be the responsibility of the selected employee.

The criteria set forth in the agency Personnel Bulletin are consistent with statute. It is clear that the agency employed these criteria to assure that the employees who relocated as the result of the agency memorandum seeking volunteers did in fact transfer “primarily for the convenience and benefit of the employee or at his/her request.” The employees were primarily interested in relocating and signed the requisite statement indicating that they were voluntarily transferring and would be responsible for relocation expenses. We find the agency’s determination -- that the employees’ transfers were primarily for the convenience of the employee and at his request -- is consistent with statute and the agency’s own policy as set forth in its Personnel Bulletin, and was not capricious or arbitrary.

Accordingly, if an employee who was relocated under the circumstances at issue were to submit a voucher for payment of relocation expenses, the agency would not have the authority to pay such expenses, as payment would not be consistent with statute or the agency’s own policy. *Timothy A. Burgess; Armando G. Solis*, GSBCA 15713-RELO, 02-2 BCA ¶ 31,870.

Decision

The agency would not have the authority to reimburse relocation expenses incurred by the employees if they submit vouchers requesting reimbursement, as the agency’s determination that the employees’ transfers were primarily for the convenience and benefit of the employees and not in the interest of the Government was within its discretion and not arbitrary, capricious, or clearly erroneous.

ALLAN H. GOODMAN
Board Judge