

# Board of Contract Appeals

General Services Administration  
Washington, D.C. 20405

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August 3, 2006

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GSBCA 16833-RELO

In the Matter of JEAN P. KAMP

Jean P. Kamp, Oak Park, IL, Claimant.

Lori Broker, Senior Attorney, Equal Employment Opportunity Commission, Phoenixville, PA, appearing for Equal Employment Opportunity Commission.

**HYATT**, Board Judge.

Claimant, Jean P. Kamp, an attorney employed by the Equal Employment Opportunity Commission (EEOC or “the Commission”), seeks a review of the agency’s denial of her claim for relocation costs. She asserts entitlement to these costs because of a reorganization within the EEOC that impacted the position she held in the Commission’s former Milwaukee, Wisconsin, District Office, which, according to Ms. Kamp, effectively caused her involuntary transfer to the Chicago District Office. The agency maintains that she could have remained in Milwaukee at the same pay and grade and that her return to Chicago was primarily for her own benefit.

## Background

In January 2000, Ms. Kamp was promoted from Supervisory Trial Attorney in the EEOC’s Chicago District Office to the position of Regional Attorney for the then-District Office in Milwaukee. Ms. Kamp relocated to Milwaukee when she accepted this promotion and purchased a condominium in that city. Since her spouse continued to be employed in

Chicago, she maintained a permanent residence in that city and commuted there on the weekends.

In May 2005, the Commission's Chair announced a repositioning plan under which the number of district offices and, thus, Regional Attorneys, located throughout the country would be reduced. Although most district offices affected by the restructuring were slated to become field offices, the plan called for the Milwaukee District Office to be converted to an area office under the Chicago District Office. Concomitant with the development and announcement of this plan, the EEOC's Chair emphasized that the repositioning plan was intended to be employee-friendly and that no employee would be required to relocate nor would any employee's grade or salary be adversely affected by the plan. Regional Attorneys whose districts were affected would be converted to Associate Regional Attorneys, with the same grade, pay, and job duties. The only difference was that their jobs could be performed from any office within the district -- it would not be necessary to be located at the district office.

Following the formal announcement of this plan, the EEOC's General Counsel and Deputy General Counsel met with all of the Regional Attorneys who would be affected by the repositioning plan, including Ms. Kamp. Although Ms. Kamp was assured that she would not be required to move as a consequence of the restructuring, she informed them that she wanted to move to Chicago in order to be in a district office, and inquired whether this would be possible. The General Counsel responded that, again, while she was not required to move, he would not oppose a move if that was her preference.

Ms. Kamp prepared a proposal for possible new positions that she might perform in Chicago and submitted them to the General Counsel prior to the date on which the Commission was scheduled to consider and vote on the repositioning plan. Her proposal included a request that the Commission pay relocation benefits. After the Commission approved the restructuring in early July 2005, Ms. Kamp put her condominium on the market and again requested approval of moving expenses. At the agency's request she provided an estimate of her moving expenses. On August 25, 2005, she contacted the General Counsel's office advising that her condominium had been sold and that closing was scheduled for September 30. When, on several occasions, she requested confirmation that relocation expenses would be approved she was told that the matter was in limbo. Near the end of September 2005, Ms. Kamp moved back to Chicago, prior to the formal implementation of the repositioning plan, which occurred in January 2006, and without travel orders. In January 2006, after the restructuring plan was implemented, Ms. Kamp received a notification of personnel action converting her position from Regional Attorney for the Milwaukee office to Associate Regional Attorney for the Milwaukee office. This document also noted that her duty station would be in Chicago.

The agency denied Ms. Kamp's request for reimbursement of her relocation costs, reasoning that the move was for her personal convenience and not in the interest of the Government. Ms. Kamp disagrees that this was the case -- she argues that the Milwaukee field office was doubly downgraded from a district office to an area office, and was not slated to have any GS-15 positions.<sup>1</sup> She adds that the District Directors in offices slated to be downgraded, who were members of the Senior Executive Service (SES), were offered jobs in remaining districts and their moving expenses were paid. Because the Milwaukee office was being downgraded so radically, Ms. Kamp could not see how she would have had any appropriate GS-15 responsibilities to perform from that location. She repeatedly expressed concerns to management about this situation and states that she was "never advised that she was wrong or that there would be a meaningful job for [her] in Milwaukee."

### Discussion

The issue to be resolved here is whether Ms. Kamp's relocation should be deemed to be primarily in the interest of the Government or primarily for her personal convenience. By statute, when a transfer is in the interest of the Government, the Government must reimburse the employee for certain expenses of the relocation and may offer to reimburse other expenses. When a transfer is primarily for the convenience of the employee, however, the Government may not pay any of the employee's relocation expenses. 5 U.S.C. §§ 5724(a)(1), (2), (h); 5724a(a), (c), (d), (f) (2000). As a general rule, when an employee takes the initiative to obtain a transfer to a position in another location, an agency usually will consider the move as being made for the convenience of the employee, whereas if the agency recruits or requests an employee to relocate to a different duty station, such transfers will ordinarily be regarded as being in the interest of the Government. *Gerard R. Sladek*, GSBCA 14145-TRAV, 98-1 BCA ¶ 29,403 (1997). The Board has consistently recognized that the authority to decide whether a particular transfer is in the interest of the Government or primarily for the convenience or benefit of an employee is a discretionary determination to be made by the agency. The Board will not disturb the agency's decision unless it is arbitrary, capricious, or clearly erroneous under the facts of the case. *E.g., Paul B. D'Agostino*, GSBCA 16841-RELO (May 26, 2006); *Deborah F. Garrett*, GSBCA 15904-RELO, 03-1 BCA ¶ 32,127 (2002); *Steven D. Hanson*, GSBCA 14270-RELO, 97-2 BCA ¶ 29,314. Finally, the Board has observed that when an employee relocates to accept a position at the same grade level and with no greater potential for promotion, that employee bears a particularly heavy burden

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<sup>1</sup> Ms. Kamp urges that this distinguishes her situation from that of the other Regional Attorneys who would continue to be located in field offices, which would have GS-15 personnel.

to overcome the agency's determination that the move was primarily for the employee's convenience or benefit. *Sladek*.

Ms. Kamp maintains that as a practical matter, she was involuntarily required to relocate to the Chicago District Office in order to properly perform at the GS-15 level. The agency maintains that while it had no objection to claimant's moving back to Chicago, she did not have to do so as a result of the restructuring. From the agency's point of view, Ms. Kamp could just as readily have performed the duties of Associate Regional Attorney from the Milwaukee area office as from Chicago; the agency was willing to have her do so and had no intention of moving her.

The personnel action that accompanied the restructuring plan supports the agency's position that Ms. Kamp, as the Associate Regional Attorney for the Milwaukee office, would have maintained her grade level and responsibilities. We are not persuaded that the agency's posture constitutes an improper exercise of its discretion under the circumstances. The gist of Ms. Kamp's concern seems to be that she would be working in an office that would no longer be headed by an SES-level executive or even by an employee at the GS-15 level. Although she makes much of this fact, the document issued by the personnel office shows that she was, both before and after implementation of the repositioning plan, organizationally part of the Office of General Counsel. This supports the agency's contention that the restructuring process would not diminish in any way the positions held by the former Regional Attorneys, who, under the plan, would be converted to Associate Regional Attorneys at that same grade level. The agency's view was that the plan would be implemented in a flexible manner such that the former Regional Attorneys could perform their duties at any office within the district, including the ones in which they were located at the time of the plan's implementation. The grade level of the head of the office would not be an impediment to the retention of the grade and level of each affected Regional Attorney.

It is understandable that, from Ms. Kamp's viewpoint, both personally and in terms of future career opportunities, a return to the Chicago area, which was the location of her primary residence as well as the district office, would be more desirable than staying in Milwaukee, which was no longer a district office. This does not mean, however, that the agency's actions in implementing the repositioning plan were tantamount to an involuntary transfer entitling claimant to relocation benefits.

Nor are we persuaded, as claimant suggests, that this case is comparable to the circumstances recently addressed in the claim of *Janice F. Stuart*, GSBCA 16596-RELO, 05-1 BCA ¶ 32,960, *aff'd reconsideration*, 05-2 BCA ¶ 33,024. In *Stuart*, the employee had transferred to Alaska from Portland, Oregon, with return rights. She did not want to return to Portland at the conclusion of her initial tour in Alaska, but her request for an extension of

the tour was denied. She was told that she was not needed in the Alaska office, which was in the process of downsizing, and that the Portland office did need her to fill a job currently being performed by an employee who was planning to retire. Since she was directed to return to Portland to fill that position, the Board held that her transfer was principally for the benefit of the agency and that she was entitled to full relocation benefits, rather than the more restricted benefits available to an employee who exercises return rights. In this case, Ms. Kamp was expressly told she could remain in Milwaukee. Her job security was in no way threatened and she was not required to relocate to maintain her GS-15 position with the agency. Neither the fact of the restructuring plan nor the agency's willingness to accommodate claimant's preference for being located at the district office is enough to demonstrate that Ms. Kamp was de facto directed by the agency to relocate so as to establish her entitlement to moving expenses. On balance, we conclude that Ms. Kamp has not met her heavy burden to establish that her relocation to Chicago was primarily in the interest of the Government.

#### Decision

The claim is denied.

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CATHERINE B. HYATT  
Board Judge