



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

September 13, 2018

CBCA 5962-RELO

In the Matter of PAUL R. TIPPETT

Paul R. Tippett, Suwanee, GA, Claimant.

Jacqueline Ferrand, Office of the Inspector General, Department of Homeland Security, Washington, DC, appearing for Department of Homeland Security.

BEARDSLEY, Board Judge.

Claimant, Paul R. Tippett, is an employee of the Department of Homeland Security (DHS), Office of the Inspector General (OIG). He claims reimbursement of relocation expenses in the amount of \$74,107.01.

Factual Background

On September 29, 2015, the agency advertised nationwide for an assistant special agent in charge (ASAC) position in the Atlanta, Georgia, field office. To fill this position required that claimant relocate from Seattle, Washington, to Atlanta, Georgia. The advertisement for the position indicated:

Relocation Authorized

- Yes
- Relocation may be Authorized

In his interview for the position of ASAC, the agency informed claimant that the question of whether relocation expenses would be authorized had not yet been decided, but the agency indicated that the move would not be fully funded. On December 8, 2015, claimant was

informally offered the position, and he accepted. On January 7, 2016, the agency informed claimant that the inspector general had not authorized relocation expenses. Claimant did not receive a formal offer letter or travel authorization for the position. In February 2016, the agency canceled this and one other vacancy announcement due to the vague language in the announcement regarding relocation. The agency, thereafter, notified claimant that it did not intend to fill the ASAC position in Atlanta based on workload requirements, management structure, and operational goals. The vacancy announcement for the Atlanta position was not re-advertised.

Claimant filed a claim with the Merit Systems Protection Board (MSPB) alleging that the agency retaliated against him by denying his promotion to ASAC in Atlanta after he informed the agency that it would be required by law to pay him relocation expenses. The parties entered into a settlement agreement to resolve the MSPB claim. As part of the settlement, claimant was hired as the ASAC in the Atlanta office. The settlement agreement stated that “[it] is the Complainant’s desire and request, for personal and voluntary reasons, to transfer from Seattle, Washington to Atlanta, Georgia. Complainant understands and agrees that his transfer . . . does not make him eligible for or entitled to any relocation costs, expenses, or bonuses and that relocation costs, expenses, and bonuses will not be paid to him in connection with this relocation.” Claimant agreed to release all claims against the agency and release the agency from any claims for relocation expenses or costs, including any right or claims arising under the Federal Travel Regulation (FTR). As part of the settlement, the agency provided claimant with ninety-five days of temporary duty (TDY), including airfare, lodging, per diem, and a rental car, to travel to Atlanta, locate a residence, and transition to the ASAC position. Mr. Tippet was also allotted forty hours of administrative leave to facilitate the transfer of goods to Atlanta. The settlement agreement was signed on August 29, 2016. On September 16, 2016, claimant received his official offer letter for the ASAC position in Atlanta and completed his transfer on December 16, 2016. Claimant filed this claim with the agency in May 2017.

Discussion

Reimbursement of travel and relocation expenses as a result of a transfer from one official station or agency to another for permanent duty is conditioned on the authorization or approval of the head of the agency or his designee and a determination by the head of the agency or his designee that the employee’s transfer was in the interest of the Government and not primarily for the convenience or benefit of the employee. 5 U.S.C. § 5724(a)(2012); 41 CFR 302-2.101, .102. “When a transfer is made primarily for the convenience or benefit of an employee, including an employee in the Foreign Service of the United States, or at his request, his expenses of travel and transportation . . . may not be allowed or paid from Government funds.” 5 U.S.C. § 5724(h); *Wilberto M. Sanchez*, CBCA 4724-RELO,

16-1 BCA ¶ 36,270, at 176,924.

The agency's decision to rescind claimant's offer and to not, thereafter, re-advertise the Atlanta ASAC position represented the agency's determination that transferring claimant was not in the Government's interest. Whether such an action violated hiring practices is not for us to decide. MSPB also did not decide this issue, because the parties settled.

The fact that the agency transferred claimant as part of its settlement of the MSPB case did not amount to an authorization of relocation expenses or a determination that the transfer was in the Government's interest. Rather, the settlement agreement indicated the opposite by clearly stating that claimant agreed that it was claimant's "desire and request, for personal and voluntary reasons" to transfer to Atlanta. Claimant also agreed that the transfer did "not make him eligible for or entitled to any relocation costs, expenses, or bonuses and that relocation costs, expenses, and bonuses will not be paid to him in connection with this relocation." While the waiver of relocation expenses incurred as a result of a transfer in the interest of the Government is not permitted, this transfer was not in the interest of the Government, as determined by the agency's initial rescission of claimant's offer and the parties' subsequent settlement agreement. The "determination of whether a transfer is in the interest of the Government is a matter within an agency's discretion, and such discretion will be upheld unless it is 'arbitrary, capricious or clearly erroneous.'" *Amy Preston*, CBCA 3434-RELO, 13 BCA ¶ 35,465, at 173,913 (citing *Riyoji Funai*, GSBCA 15452-RELO, 01-1 BCA ¶ 31,342, at 154,778). We find that the agency's determination was not arbitrary, capricious, or clearly erroneous.

Decision

For the foregoing reasons, the Board denies Mr. Tippet's claim for reimbursement of relocation expenses.

Erica S. Beardsley

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Board Judge