UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

March 10, 2026

CBCA 8761-RELO

In the Matter of BRANDON A.

Brandon A., Claimant.

David B. Gattis, Acting Counsel, Office of General Counsel, Office of Civilian Human Resources, Department of the Navy, Washington, DC, appearing for Department of the Navy.

LESTER, Board Judge.

When serving in a General Schedule (GS) 13 position, claimant was reassigned from his original permanent duty station (PDS) to a remote work PDS after signing an agreement providing that, if his position was later found ineligible for remote work, he would waive any right to relocation benefits if recalled to in-office work at an agency worksite. Subsequently, in response to a merit promotion job vacancy announcement, he applied for and was hired into a new GS-14 in-office position, over several other applicants, to be stationed at his original PDS. After transferring back to what was now his new PDS, which was more than fifty miles from his remote work PDS, he requested that the agency reimburse him for real estate transaction expenses that he would incur in selling his residence at the remote work PDS and purchasing a residence at the new PDS.

The agency has identified a host of reasons that claimant is not entitled to such benefits, but we ultimately reject all of them. For reasons that we will explain below, even if we could find that claimant's prior agreement to waive relocation benefits applied to his acceptance of the new GS-14 position, the agreement is contrary to statute and not enforceable in the circumstances here. Further, the agency did not declare either in the job vacancy announcement or in the offer letter to claimant for the GS-14 position that relocation

benefits would not be available for the transfer, and, in fact, the agency did not disclose the unavailability of such benefits until ten months after claimant had transferred to the new PDS. That failure conflicts with the agency's obligation, consistent with regulation, to provide prior notice of benefits unavailability to the successful applicant for a position in, at the very latest, the job offer for that position. Accordingly, the claim is granted. Claimant is entitled not only to the real estate transaction expense reimbursement that he requests here but also to the full panoply of relocation benefits to which a transferred employee is, by statute, allowed.

Background

I. Designation of Claimant's Duty Station as Remote

Claimant was working in a GS-13 position in the Staffing, Classification and Compensation Department of the Office of Civilian Human Resources (OCHR) within the Department of the Navy (Navy). His PDS was just north of San Diego, California.

On July 17, 2024, an authorized OCHR representative approved claimant for full-time remote work, effective June 30, 2024, from his residence sixty-eight miles away from the San Diego PDS. In an agreement that claimant and his OCHR supervisor at the time signed, claimant agreed that, "[i]f approved [for full-time remote work] but later determined to be ineligible for remote work after the enactment of this agreement, [he] will not be eligible for relocation reimbursement if [he is] offered the ability to work from an OCHR worksite." Exhibit 3 ¶ 3.[1] Claimant also agreed that, if and when he needed to come into the OCHR operations center, OCHR would not be charged any costs for his travel or relocation.

On July 30, 2024, the Navy issued a notification of personnel action designating claimant's official PDS as "Riverside / Riverside / California," Exhibit 4, with his residence being his official worksite. *See* 5 CFR 531.605(d)(3) (2024). Claimant's locality pay was modified to reflect the new PDS.

II. Claimant's Acceptance of a New Position

On November 20, 2024, OCHR issued a job announcement on the USAJOBS website for a non-remote GS-14 position in the Recruitment Division of OCHR Headquarters. The

[1] All exhibits referenced in this decision are attached to the agency's response to the claim, filed January 30, 2026.

announcement indicated as follows about whether the agency would reimburse relocation expenses if the successful applicant was otherwise eligible for them:

> **Relocation expenses reimbursed**
> Yes—You may qualify for reimbursement of relocation expenses in accordance with agency policy.

Exhibit 8 at 2.

Claimant submitted an application for the GS-14 position before the November 25, 2024, application deadline. The agency reports that an ample number of qualified candidates, in addition to claimant, applied for the position. Exhibit 9 at 2 ¶ 7.

On January 8, 2025, the USA Staffing Office notified claimant by email that he was tentatively selected for the GS-14 position, with a duty station in San Diego. Exhibit 10 at 1. The email did not contain any reference to relocation benefits. *See id.* at 1-2. Claimant received another email on January 23, 2025, this one providing him with an official job offer for the GS-14 position, again with a San Diego duty station, and a three-day deadline to respond. Exhibit 11 at 1. Again, the email contained no reference to relocation benefits. *See id.* at 1-2. Claimant accepted the job offer within the three-day deadline.

Between February 3 and 6, 2025, claimant sought guidance about whether he might be allowed to continue to find an alternative work station closer to his residence than San Diego, *see* Exhibit 13 at 1, but, ultimately, the notice of personnel action for his new GS-14 position, which was issued effective February 9, 2025, directed claimant to report for duty at his old PDS in San Diego. He did so on February 10, 2025, and has continued to work at that location since that time.

III. Return-to-In-Person-Work Directives

On January 22, 2025, the day before claimant received his formal job offer for the GS-14 position, the Office of Personnel Management (OPM) issued a memorandum directing that, as set forth in a recent Presidential Memorandum, "agency heads . . . 'take all necessary steps to terminate remote work arrangements and require employees to return to work in-person at their respective duty stations on a full-time basis' 'as soon as practicable.'" Exhibit 5 at 2 (quoting Presidential Memorandum, *Return to In-Person Work* (Jan. 20, 2025)). OPM directed that agencies revise their telework policies to require "eligible employees [to] work full time at their respective duty stations," with some exceptions, *id.* at 2-3, and that, "[i]f an employee's official duty station is more than 50 miles from any existing agency office, the agency should take steps to move the employee's duty station to

the most appropriate agency office based on the employee's duties and job function." *Id.* at 3.

The then-Acting Secretary of Defense issued implementing guidance on OPM's memorandum on January 24, 2025, indicating that, "[e]ffective immediately, regular telework and remote work arrangements are not permitted," except in specific situations. Exhibit 6 at 1. It provided that agency field activity directors "take all necessary steps to terminate regular telework and remote work arrangements and require employees to return to in-person work at their respective duty stations on a full-time basis." *Id.*

No notification of personnel action changing claimant's PDS for his GS-13 position from Riverside, California, to San Diego was ever issued. When the notification of personnel action was issued for his new GS-14 position, identifying San Diego as his PDS, it was a change of PDS.

IV. Claimant's Request for Permanent Change of Station (PCS) Real Estate Benefits

On April 1, 2025, claimant sent an email to his supervisor explaining why he believed that he was entitled to PCS costs, stating that he and his family needed to move closer to work and family. Exhibit 15.

In a letter dated December 19, 2025, OCHR denied claimant's request for relocation benefits, as follows:

> [OCHR] determined, after an evaluation of the circumstances surrounding your request for [PCS] relocation costs from Riverside, California, to . . . San Diego, California upon your promotion from a GS-0201-13 to a GS-0201-14, that the transfer was not in the interest of the Government, but would primarily be for your convenience. *See* 5 U.S.C. § 5724a(b). The vacancy announcement states 'may pay PCS costs,' not that it was guaranteed. You were offered and accepted the position following the Tentative and Official Job Offers, which did not approve PCS costs.

Exhibit 16 at 1.

Claimant filed his claim with the Board on December 31, 2025, which he updated on January 2 and 5, 2026. The Clerk of the Board docketed the claim as CBCA 8761-RELO on January 5, 2026. The agency filed a thirteen-page response to the claim on January 30, 2026, which was accompanied by numerous exhibits relating to the claim and the agency's evaluation of it. Claimant filed a reply on February 18, 2026.

Discussion

I. Real Estate Transaction Expense Eligibility Requirements

By statute, employees transferring from one duty station within the continental United States to another, with no break in service, are entitled to reimbursement of real estate transaction expenses incurred as part of a relocation as long as the transfer (1) is in the interest of the Government (rather than for the convenience of the transferring employee) and (2) meets the distance requirements established by regulation:

> Under regulations prescribed under section 5738, an agency shall pay to or on behalf of an employee who transfers in the interest of the Government, expenses of the sale of the residence . . . of the employee at the old official station and purchase of a residence at the new official station that are required to be paid by the employee, when the old and new official stations are located within the United States.

5 U.S.C. § 5724a(d)(1) (2018); *see* Federal Travel Regulation (FTR) 302-1.1(b) (41 CFR 302-1.1(b)) ("An employee transferring in the interest of the Government from one agency or duty station to another for permanent duty" beyond the required distance is "generally eligible for relocation expense allowances."); *id.* 302-3.101 tbl. A (requiring payment of real estate transaction expenses as a relocation benefit); *id.* 302-11.2(a)(3) ("Your relocation must meet the distance test conditions of [FTR] 302-2.6" to qualify for residence transaction expense reimbursement.).

"The distance test is met when the new official station is at least 50 miles further from the employee's current residence than the old official station is from the same residence," FTR 302-2.6(a), absent a waiver by an appropriate official allowing for a lesser distance. *Id.* 302-2.6(b). "PCS travel and transportation allowances *must* be paid when it is in the Government's interest to fill a position by moving a civilian employee [at least fifty miles, with no break in service,] from one PDS to another." Joint Travel Regulations (JTR) 053705-A (Feb. 2025) (emphasis added).

That being said, before an employee can recover relocation benefits, the transferred employee is required to "sign a service agreement," FTR 302-11.3, promising to "remain in the service of the Government, after [he or she] ha[s] relocated, for a period of" not less than twelve months following the effective date of the transfer. *Id.* 302-2.13; *see id.* 302-2.14(a). That requirement is rendered effectively irrelevant, however, when the employee has already satisfied "the minimum post-transfer service requirement of twelve months" by the time that he or she files a claim with the Board. *Kevin R.*, CBCA 8403-RELO, 26-1 BCA ¶ 38,976,

at 189,764; *see Kelli A. Baumgartner*, CBCA 6006-RELO, 18-1 BCA ¶ 37,176, at 180,947 n.1 ("[T]he absence of [a] signed service agreement is not fatal to a claim for relocation allowances so long as the employee has remained in Government service for the required length of time."). "[A]n employee need only remain in government service without a break in service for a minimum of [twelve] months following the transfer for which reimbursement is claimed" for his or her right to relocation benefits to vest, even without a signed service agreement. *Kevin R.*, 26-1 BCA at 189,764 (quoting *Thomas D. Mulder*, 65 Comp. Gen. 900, 905 (1986)).

II. Comparison to Relocation Incentive Payments

In its response, OCHR mixes concepts and requirements applicable to an agency's ability to pay relocation incentives with those applicable to a transferring employee's relocation benefits, including real estate transaction expense reimbursement.

In appropriate circumstances, as authorized by statute, an agency can offer relocation incentive payments to encourage federal employees to transfer to a new position if, among other things, "the position to which . . . such individual moves or must relocate . . . is likely to be difficult to fill in the absence of such a bonus." 5 U.S.C. § 5753(b)(1); *see* 5 CFR 575.205(a). A relocation incentive is a cash bonus not to exceed 25% of the employee's basic pay (absent an authorized waiver of the limit) that serves to encourage the employee to accept a transfer and is paid either in a lump sum at the beginning or end of the service period or over time through a series of installment payments. 5 U.S.C. § 5753(b), (d)(1); 5 CFR 575.209; Exhibit 19 at 11-12 (Department of Defense (DoD) Instruction 1400.25, vol. 575, DoD Civilian Personnel Management System: Recruitment, Relocation, and Retention Incentives and Supervisory Differentials (Feb. 2, 2018) §§ 5.1(h)(1), 5.2(b)).

Relocation incentives authorized by 5 U.S.C. § 5753 "are different from the relocation expenses paid pursuant to 5 U.S.C. § 5723 or § 5724." *Jonathan E. Pearson*, CBCA 6489-RELO, 19-1 BCA ¶ 37,419, at 181,876. Relocation benefits—at least as they apply to residential real estate transaction expenses—involve reimbursement to an employee of expenses actually incurred. FTR 302-11.1. Conversely, "[a] relocation bonus [or incentive payment] is . . . a form of employee compensation," not a relocation expense reimbursement. *Robin D. Hibler*, CBCA 4852-RELO, 15-1 BCA ¶ 36,083, at 176,180 (citing *James A. Kester*, CBCA 4411-RELO, 15-1 BCA ¶ 35,966, at 175,729). While the Board reviews federal civilian employees' claims "for relocation expenses incident to transfers of official duty station," the Director of OPM resolves federal civilian employees' "claims involving . . . compensation and leave." 31 U.S.C. § 3702(a)(2), (3); *see Jerald Lucas*, CBCA 5296-RELO, 17-1 BCA ¶ 36,617, at 178,340 (2016) (Board lacks authority to resolve disputes about unpaid relocation incentives). Given the division of review authority between the

Board and OPM, it is clear that relocation incentives and relocation expense reimbursements are separate concepts involving different types of benefits.

III. Claimant's Entitlement to Real Estate Transaction Expense Reimbursement

A. The Presumption of Government Interest Absent a Contrary Statement

On its face, this claim should be easy to resolve. Claimant responded to a competitive job vacancy announcement advertising a GS-14 position, to be filled on a merits basis; there were a number of qualified eligible applicants; and claimant was ultimately selected out of a pool of qualified candidates. Claimant was already a federal employee when he accepted the new GS-14 position, and his official PDS at that time, as identified on his notification of personnel action, was in Riverside, California, which is more than fifty miles from his new official PDS in San Diego. Although the JTR provides that "[t]ravel and transportation allowances do not tie automatically to a Merit Promotion Program vacancy announcement" (like the one advertising the GS-14 position for which claimant was hired), JTR 053705-D, we would normally expect in such circumstances that the transferring employee would be entitled to relocation benefits, including reimbursement of residential real estate transaction expenses, necessary to move from the old PDS to the new PDS. *See*, *e.g.*, *Eugene R. Platt*, 59 Comp. Gen. 699, 701 (1980), *on reconsideration*, 61 Comp. Gen. 156, 157 (1981). That is because "[a] selection and transfer of an employee pursuant to a merit promotion program is generally deemed to be an action taken in the interest of the Government." *Charanette Y. Duckworth*, GSBCA 16860-RELO, 06-2 BCA ¶ 33,358, at 165,393-94.

Despite that, OCHR challenges claimant's position that claimant's transfer was "in the interest of the Government" and argues that it was instead primarily for claimant's own convenience, making him ineligible for relocation benefits. "When an employee is transferred from one [PDS] to another, the transfer usually benefits both the Government and the employee." *Thelma H. Harris*, GSBCA 16303-RELO, 04-1 BCA ¶ 32,540, at 160,970 (2003). "For the purpose of determining whether the employee may receive relocation benefits, however, the transfer must be characterized as for the principal advantage of one or the other; it is either 'in the interest of the Government' or 'primarily for the convenience or benefit of an employee.'" *Id.* "If the primary beneficiary is the employee, . . . none of these expenses may be paid from Government funds." *Id.*

"An agency has the discretion to decide, in the first instance, which characterization better applies to a transfer, and that determination is accorded great deference." *Thelma H. Harris*, 04-1 BCA at 160,971. "Before a DoD Component advertises for a vacancy, the appropriate official should determine if it is in the Government's interest to pay PCS allowances taking case-by-case factors into consideration." JTR 053705-B. Such

"[c]ase-by-case factors" include "cost-effectiveness, labor market conditions, and difficulty in filling the vacancy. *Id.* 053705-A. If "an activity . . . determine[s] that well-qualified candidates exist within a particular geographical area," it might reduce the need for relocation benefits by "restrict[ing] the recruitment area in the recruitment announcement or indicat[ing] that PCS allowances are not offered." *Id.* 053705-B. "If a civilian employee pursues, solicits, or requests a position change resulting in a geographic move from one PDS to another, the transfer is for the civilian employee's convenience and benefit, not in the Government's interest." *Id.* 053705-C.2. Ultimately, "[i]t is each DoD Component's responsibility to make decisions that balance a civilian employee's rights and the prudent use of appropriated funds." *Id.* 053705-B.

"The agency's exercise of discretion is subject to review" by the Board, "and it will be overturned where a claimant can show that it was arbitrary and capricious or clearly erroneous." *Thelma H. Harris*, 04-1 BCA at 160,971.

B. Notice Requirements

If the agency decides that a transfer is not primarily in the interest of the Government, it must appropriately and timely notify applicants for the position that the agency will not be providing relocation benefits. Typically, "[t]his information should be provided in the position advertisement, but can be decided after the applicants are referred to the selecting official." JTR 053705-B. Whenever the decision is made, "[t]he appropriate official must document any decision against paying PCS allowances in writing." *Id.* 053705-D. At the very latest, the agency is required to "notify in writing all applicants selected for interview of its decision whether to pay PCS allowances" or, "[i]f the organization [will] not hold interviews, . . . inform the selected applicant, in writing, whether it will pay PCS allowances." *Id.* Even if a position is one that the civilian employee himself or herself solicited, which typically provides a basis for finding that the transfer is for the employee's convenience, "the gaining activity must formally advise the civilian employee, at the time it extends an offer, that the transfer is in the civilian employee's interest, not in the Government's interest, and that the Government does not pay the PCS expenses." *Id.* 053705-C.2.

"[E]mployees are entitled to their relocation expenses [if] the agency policy was not clearly communicated to the applicants *in advance*." *Rudd & Erickson—Reimbursement for Relocation Expenses Incurred Incident to Merit Promotion Transfers*, B-211910, 1983 WL 27413, at *1 (Sept. 26, 1983) (emphasis added); *see Charanette Y. Duckworth*, 06-2 BCA at 165,394 ("[I]f the determination is that the transfer would not primarily benefit the Government such that relocation costs would not be paid, the agency must communicate the information in advance and in writing to all applicants."); *Mark Huckel*, GSBCA

16019-RELO, 03-1 BCA ¶ 32,231, at 159,362-63 (requiring advance disclosure to applicants of decision not to offer relocation benefits). "Once the selections [are] made without clear advance notice, the agency [can no longer] declare that the transfers were not in the interest of the Government." *Rudd & Erickson*, 1983 WL 27413, at *1.

C. The Agency's Arguments Against Relocation Benefit Availability

The agency raises several arguments to support its position that the transfer here was in claimant's, rather than the Government's, primary interest. We reject all of them, as follows:

1. Treating relocation benefits as a relocation incentive, OCHR argues that the transfer was not in the Government's interest because the position was not difficult to fill, given the number of qualified applicants who applied, which, OCHR says, automatically bars relocation benefits. Agency Response at 9. In making this argument, OCHR asserts that it is entitled to "consider relocation benefits as a recruitment incentive" and restrict the availability of relocation benefits to situations in which a relocation incentive could be offered. *Id.* at 10. As noted above, an agency cannot offer a relocation incentive unless it believes that a position will be difficult to fill. 5 U.S.C. § 5753(b)(1); 5 CFR 575.205(a). Yet, relocation benefits are *not* the same as recruitment or relocation incentives. *Robin D. Hibler*, 15-1 BCA at 176,180. Although "difficulty in filling the vacancy" is a *factor* that the agency can consider in determining whether a transfer is in its interest for purposes of PCS benefits, JTR 053705-A, it is just one of several factors, and a transfer is not barred from being in the interest of the Government simply because the position is not difficult to fill. *See id.* Further, if a transfer is eligible for relocation benefits, those benefits become an *entitlement*, *Amy Preston*, CBCA 3434-RELO, 13 BCA ¶ 35,465, at 173,913, unlike a relocation incentive, which is something that an agency, in its discretion, might decide to offer if, and *only* if, a position is one that is likely to be difficult to fill. *See* 5 U.S.C. § 5753(b)(1); 5 CFR 575.205(a). OCHR cannot restrict entitlement to relocation benefits by bootstrapping the statutory limitations placed on relocation incentive payments onto them.

2. OCHR argues that the job vacancy announcement never said that relocation benefits would be available and that applicants should therefore not have expected them. Agency Response at 8-9. OCHR misinterprets what it told applicants. In the vacancy announcement, OCHR stated, under the heading "Relocation expenses reimbursed," as follows: "Yes—You may qualify for reimbursement of relocation expenses in accordance with agency policy." Exhibit 8 at 2. The agency argues that, because it used the word "may," no reasonable applicant should have viewed the availability of relocation benefits to qualifying transferring employees as a promise. Yet, in appropriate circumstances, the word "may" can be interpreted to mean "will" or "must." *See, e.g.*, *ROHM Semiconductor USA,*

LLC v. MaxPower Semiconductor, Inc., 17 F.4th 1377, 1382 (Fed. Cir. 2021) (finding that use of the word "may," in context, meant "shall"); *Steel Products Engineering Co. v. United States*, 71 Ct. Cl. 457, 477 (1931) ("The word 'may' is generally construed to mean 'shall' in statutes which confer a power to be exercised for the benefit of the public or of a private person. In such cases 'may' is often treated as imposing a duty rather than conferring a discretion."); Bryan Garner, Dictionary of Modern Legal Usage 939 (2d ed. 1995) ("Courts in virtually every English-speaking jurisdiction have held—by necessity—that shall means may in some contexts, and vice versa."). "Whether the word ['may'] is to be construed as mandatory or as permissive is to be determined in each case from the apparent intention as gathered from the context, considering the whole instrument in which it is used." *Steel Products*, 71 Ct. Cl. at 477. Here, OCHR said "Yes" after the "Relocation expenses reimbursed" heading, followed by an explanation that an applicant "may" qualify for such expenses. Interpreting this provision in the job announcement from an objective standpoint in the context of the language used, as we must, *Overstreet Electric Co. v. United States*, 59 Fed. Cl. 99, 112 (2003), an applicant would reasonably assume that relocation benefits were available to current federal employees but only if they were transferring more than fifty miles from their existing PDS without a break in service. If OCHR had wanted to indicate in the vacancy announcement that it had not yet decided whether to provide relocation benefits, it could have expressly stated just that. It did not. Instead, it just said, "Yes." It never corrected or amended that representation before claimant accepted the transfer.

3. Even if the provision could be read as ambiguous about the availability of relocation benefits, it still could not be read in the agency's favor. Because a merit promotion hire is typically viewed as in the interest of the Government, *see Charanette Y. Duckworth*, 06-2 BCA at 165,393-94, the JTR requires deciding officials to document any decision *not* to provide PCS allowances in merit hires and, unless the vacancy announcement clearly states that no relocation benefits will be offered, expressly to inform applicants who will interview for the position or, if there will be no interviews, to "inform the selected applicant, in writing, whether it will pay PCS allowances." JTR 053705-D. The vacancy announcement here did not inform applicants of the absence of relocation benefits, and OCHR acknowledges that at no time before claimant accepted the GS-14 position did it make any express representation barring such benefits. *See* Agency Response at 10. The first time that the agency put in writing that no PCS allowances would be given was in December 2025, *ten months* after claimant started the GS-14 job. The JTR provisions make clear that any notice about relocation benefits not being provided must come, at the latest, *before* the successful applicant accepts and begins work in the new position. "[T]he longstanding rule requiring publication of such decisions obviously was intended to protect employees who need all information relevant to the important decision of whether to accept a transfer to a new duty station." *Mark Huckel*, 03-1 BCA at 159,363. Accordingly, as noted above, "[o]nce the selections [are] made without clear advance notice, the agency [can no longer]

declare that the transfers were not in the interest of the Government." *Rudd & Erickson*, 1983 WL 27413, at *1.[2]

4. OCHR complains that claimant never inquired about relocation benefits before accepting the GS-14 position and that the agency, as a matter of policy, only provides such benefits if an applicant requests them prior to accepting the position. *See* Agency Response at 10 ("It is agency practice not to offer these benefits unless . . . the selectee has negotiated for the benefit."). Yet, as the JTR makes clear, it is the agency's obligation clearly to disclose to applicants, in a timely manner before a job offer is accepted, that relocation benefits will not be made available. JTR 053705-D. If the agency fails to do so, the transferring employee who otherwise qualifies for benefits can assume that he or she is entitled to them. *Rudd & Erickson*, 1983 WL 27413, at *1. OCHR's policy of providing benefits only if an applicant requests them before accepting a job that requires a transfer conflicts with that requirement.

5. To the extent that, in its briefing, the agency suggests that claimant is not entitled to relocation benefits because he pursued the GS-14 position for his own personal reasons by responding to a job vacancy announcement, making the transfer automatically in his rather than the Government's interest under JTR 053705-C.2, *see* Agency Response at 10 (asserting that claimant "applied [for] and accepted the position without an offer for payment of relocation expenses or incentives"), the JTR expressly provides that "[a] civilian employee responding to a vacancy request is not pursuing, soliciting, or requesting a position change." JTR 053705-C.2. The JTR also requires that, if an agency will not provide PCS benefits to an employee who *has* pursued, solicited, or requested a transfer for his or her own convenience, the agency is still required to provide explicit pre-hiring notice of that fact to the employee. *Id.* OCHR did not provide that notice here, precluding it from denying claimant's relocation cost reimbursement. *See Rudd & Erickson*, 1983 WL 27413, at *1.

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[2] OCHR asserts that JTR 053705-D, which requires notification of an agency's no-benefits determination to all applicants selected for an interview or to the selectee if there will be no interviews, does not expressly require that the notification occur *before* a job offer is accepted and the employee's transfer is accomplished. *See* Agency Response at 7 n.4. It believes that its notice to claimant about the absence of relocation benefits, made ten months after claimant had transferred to his GS-14 post, was "at most . . . harmless error." Agency Response at 10. OCHR's position would render the JTR disclosure requirement pointless. The purpose of the disclosure is to allow qualified applicants to decide if they want to accept a position based upon the terms on which it is being offered. Post-transfer disclosure does not accomplish that goal. *See Mark Huckel*, 03-1 BCA at 159,363.

6. OCHR argues that claimant waived any claim to relocation benefits when, while employed in his GS-13 position, he signed a contract with his then-supervisor agreeing that, if he was "approved [for full-time remote work] but later determined to be ineligible for remote work after the enactment of this agreement, [he would] not be eligible for relocation reimbursement if . . . offered the ability to work from an OCHR worksite." Exhibit 3 ¶ 3; *see* Agency Response at 11-12. The agency asserts that we must enforce the terms of that contract just as we would any other contract, Agency Response at 11 (citing *Zhengxing v. United States*, 71 Fed. Cl. 732, 738 (2006)), and that, through this agreement, claimant plainly agreed to waive relocation benefits if called back to his San Diego PDS. As an initial matter, it is not clear that, on its face, the relocation benefits waiver in the agreement applies in the circumstances here. Claimant's GS-13 position supervisor signed the agreement, and it could be interpreted to apply only to his recall to the office for his GS-13 work, not to a transfer required as part of a new job. We need not resolve that issue because the case law is clear that a purported waiver of a right to relocation benefits is unenforceable. When an agency transfers an employee in the interest of the Government, "it does not have the authority to nullify payment of the costs of relocation by entering into an agreement with the employee to waive that payment." *Amy Preston*, 13 BCA at 173,913. "It has been long recognized that '[a]n agreement to waive statutory pay or allowances is not enforceable.'" *Id.* (quoting *James R. Gray*, 3 Comp. Gen. 207, 208 (1923)); *see Bancroft v. United States*, 56 Ct. Cl. 218, 221-22 (1921) ("It is well settled to the general effect that agreements to forego any part of a statutory compensation will not be enforced, and that recovery may be had for a withholding under such agreements."), *aff'd*, 260 U.S. 706 (1922). In fact, OPM issued guidance in 2021 warning agencies to consider carefully the cost ramifications of terminating remote work arrangements, asserting that, "[i]f an employee's position of record is located outside of the official station for the agency worksite, relocation reimbursement may apply if the agency chooses to relocate the employee back to the agency worksite." Office of Personnel Management, 2021 Guide to Telework and Remote Work in the Federal Government (Nov. 2021) at 66 (available at https://www.opm.gov/chcoc/transmittals/2021/attachments/guide-to-telework-in-the-federal-government%20v4%203-4-2025.pdf (last visited Mar. 10, 2026)).[3] Because a transferred

[3] Like the 2021 OPM guide, the updated OPM telework guide issued in December 2025 warns that, before allowing a remote work arrangement with a PDS change, agencies should consider the "[c]ost of terminating or adjusting remote work agreements based on changing workforce policies and mission needs, including relocation or workspace costs if an employee is directed to work at an agency worksite should the remote work agreement be terminated." Office of Personnel Management, Guide to Telework and Remote Work in the Federal Government (Dec. 2025) at 19 (available at https://www.opm.gov/telework/documents-for-telework/2025-guide-to-telework-and-rem

employee is entitled by statute to certain relocation benefits (including real estate transaction expense reimbursement) for transfers in the interest of the Government of more than fifty miles, *Deborah E. Gershman*, GSBCA 14569-RELO, 98-2 BCA ¶ 29,811, at 147,633, the agency had no authority to execute an agreement requiring claimant to waive his statutory right to such benefits. The agreement is unenforceable.

7. OCHR reports that, by no later than June 2, 2025, OCHR had offered to let claimant accept an alternative seat at one of two military bases (neither a Navy base) that would have been within fifty miles of his prior Riverside GS-13 PDS and that claimant had declined those offers in favor of remaining at the San Diego PDS. OCHR argues that claimant's decision to decline these offers shows that the original February 2025 transfer to San Diego was for his convenience, rather than in the Government's interest. Agency Response at 12. Yet, those alternative seat offers came after claimant had already reported for duty to his San Diego GS-14 post and, as it appears from the record, after claimant's spouse had taken a job in San Diego. OCHR cannot rely on these after-transfer actions to shift or defeat responsibility for its failure to make pre-transfer disclosures regarding the unavailability of relocation benefits. *See Jenny Yoon*, GSBCA 16116, 03-2 BCA ¶ 32,354, at 160,059 (finding that claimant's decision to continue with transferred position after learning of absence of benefits, as she was preparing to depart for new PDS following her acceptance of the job offer, did not preclude benefit recovery).

8. OCHR argues that, because it did not offer and claimant did not sign a service agreement indicating that he would stay in his GS-14 position for at least twelve months from the date of transfer, he cannot recover real estate transaction expenses. Yet, claimant has already served in his GS-14 position for more than the required twelve months. His failure to have been offered or to have signed a service agreement is now effectively moot and does not preclude his entitlement to relocation benefits. *See Thomas D. Mulder*, 65 Comp. Gen. at 905.

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ote-work.pdf (last visited Mar. 10, 2026)).

Decision

For the foregoing reasons, the claim is granted. Claimant is entitled to all mandatory relocation benefits identified in table A of FTR 302-3.101, including reimbursement of residential real estate transaction expenses, for his transfer from the Riverside PDS to the San Diego PDS.

Harold D. Lester, Jr.
HAROLD D. LESTER, JR.
Board Judge