**Comptroller General**
**of the United States**

**Washington, D.C. 20548**

# Decision

**Matter of:** Glenn Rutledge—Short Distance Transfer

**File:** B-254585.3

**Date:** January 26, 1996

## DIGEST

An agency adopted a regulation to limit relocation benefits for transferring employees to transfers in which the new duty station and the old duty station are at least 30 miles apart and the employee's commute increases at least 30 miles. Based on this regulation, the agency denied an employee's request for reimbursement for relocation expenses. The employee appeals the agency's decision asserting that the agency's regulation is contrary to law because it was motivated primarily by the agency's desire to reduce relocation expenses. The regulation is within the discretion given agencies under the applicable Federal Travel Regulation. Therefore, the claim is denied.

## DECISION

Mr. Glenn Rutledge, an employee of the National Oceanic & Atmospheric Administration (NOAA), Department of Commerce, appeals his agency's denial of relocation expenses incident to his permanent change-of-station. We sustain the agency's determination.

BACKGROUND

Mr. Rutledge successfully applied for a GM-13 meteorologist's position in Silver Spring, Maryland. At the time of his selection, he had been serving as a GS-12 meteorologist at Camp Springs, Maryland, which is 26 miles from Silver Spring. As a result of the transfer, which was effective May 2, 1993, Mr. Rutledge's commute increased from 24 to 50 miles. Subsequently, Mr. Rutledge purchased a home near Silver Spring that shortened his commute to 15 miles.

The position for which Mr. Rutledge was selected had been advertised in a NOAA Merit Promotion Program vacancy announcement. This announcement did not include a statement that relocation benefits would not be offered to the successful applicant. Therefore, according to an agency policy, "When this statement is not on the vacancy announcement, if otherwise eligible, an employee from outside the

commuting area selected from a Merit Promotion Certificate is entitled to payment of relocation expenses." Section 3, para. .03, Personnel Bulletin 335-2, Aug. 5, 1987.

The issue here is whether Mr. Rutledge is "an employee from outside the commuting area." The answer depends of the validity of an amendment to an agency regulation limiting the circumstances in which the agency would pay for relocation expenses. There is no dispute that if the regulation is within the scope of the agency's discretion, Mr. Rutledge's claim may not be paid.

The amendment, announced in an October 20, 1992, memorandum, provides that to qualify for relocation benefits incident to a transfer, the distance between the old and new duty stations and the increase in the employee's commute must be at least 30 miles. Previously, the agency applied a 10-mile minimum distance contained in the governmentwide Federal Travel Regulation (FTR). The memorandum further states that exceptions to this requirement will be considered on a case-by-case basis. The stated purpose of the amendment, according to the memorandum, was "concerns previously expressed by the Deputy Under Secretary that the cost for NOAA relocations could and should be lowered."

Based on this amendment, the agency denied Mr. Rutledge's claim for relocation benefits. Mr. Rutledge requested an exception, which also was denied.

In his appeal to this Office, Mr. Rutledge asserts that the agency may not use budget constraints to increase the commuting requirement from 10 miles to 30 miles. He also asserts that he relied in good faith on assurances from his supervisor that the agency had approved relocation benefits incident to his transfer.

OPINION

The payment of relocation expenses is authorized under 5 U.S.C. §§ 5724 and 5724a (1988). This authority requires agencies to determine first that the transfer is "in the interest of the Government" and not "primarily for the convenience or benefit of the employee." 5 U.S.C. § 5724(a) and (h), respectively. The determination that a transfer is in the interest of the government, however, is only an initial threshold requirement. An employee for whom relocation benefits are authorized still must comply with all the applicable regulatory requirements. For example, even when an employee's transfer is in the interest of the government, the employee may not be reimbursed real estate expenses for the sale of a residence that does not meet the title and occupancy requirements in the FTR. See FTR § 302-6.1(c) and (d) (1994).

Another such regulation requires agencies to determine that the "relocation was incident to the change of official station." FTR § 302-1.7. The regulation provides, "Ordinarily, a relocation of residence shall not be considered as incident to a change of official station unless the one-way commuting distance from the old residence to

the new official station is at least 10 miles greater than from the old residence to the old official station." Id. The regulation does not establish bright-line rules to determine when a relocation is incident to a transfer, but rather, requires agencies to take into account such factors as the increase in the employee's commuting time and distance.

By its own terms, the FTR regulation imposes a duty on agencies to use the stated criteria to determine when a relocation is incident to a transfer. The 10-mile figure is only a guideline, not an inflexible benchmark, to be considered with other factors, such as the change in the time and distance of the employee's commute. B-256350, May 4, 1994; John W. Lacey, 67 Comp. Gen. 336 (1988).

This regulation does not prohibit agencies from establishing guidelines with a mileage radius greater than 10 miles, providing the mileage radius is reasonable. For example, in B-256350, supra, we upheld an Air Force policy to deny relocation benefits for civilians transferred with their functions from one base to another base 19 miles away, even though in the case submitted for our review, the employee's commuting distance increased from 24 to 45 miles and his commuting time increased from 35 to 75 minutes.

Regarding Mr. Rutledge's assertion that the agency's 30-mile guideline is based on cost considerations, we are not aware of any reason why an agency may not take budget considerations into account when adopting its own regulations, provided, as we find here, that the regulations are within the agency's discretion. Cost may not be used as a factor for denying relocation benefits when an individual meets all the eligibility requirements for relocation expenses; which is not the case here. See David C. Goodyear, 56 Comp. Gen. 709 (1977) and Paul J. Walski, B-190487, Feb. 23, 1979.

As for Mr. Rutledge's claim that he acted in good faith on assurances from agency personnel that he would be reimbursed for his relocation expenses, the record shows that, although his supervisor told him that relocation benefits would be approved, his supervisor did not have the authority to make that final determination. The well-established rule is that erroneous advice may not serve as the basis for the payment of a claim that is otherwise contrary to law. See Debra Dreisbach, B-261141, Nov. 9, 1995.

Accordingly, the claim is denied.

/s/Seymour Efros
for Robert P. Murphy
General Counsel