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*P. Jannicelli  
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**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D. C. 20548**

**FILE:** B-186684

**DATE:** February 2, 1977

**MATTER OF:** Philip E. Schaeffer - Relocation Expenses

**DIGEST:**

1. Employee of IRS, transferred from Brookhaven, New York, to Philadelphia, Pennsylvania, effective November 10, 1974, claims travel and transportation expenses. He may not be paid such expenses since he was informed prior to travel that reimbursement of moving expenses was disallowed by officials of IRS who determined transfer to be for benefit or convenience of employee.
2. It is within discretionary authority of employing agency to determine whether transfer is in interest of Government or for benefit or convenience of employee for purposes of reimbursement of moving expenses. B-184251, July 30, 1975.
3. Legal rights and liabilities in regard to travel allowances vest at time travel is performed under travel orders and such orders may not be revoked or modified retroactively so as to increase or decrease rights which have become fixed under applicable regulations. Exception may be made only when error is apparent on face of travel orders and all facts and circumstances demonstrate that some provision previously determined and definitely intended has been omitted through error or inadvertence. B-175433, April 27, 1972.
4. United States is not liable for erroneous actions of its officers, agents or employees even though committed in performance of official duties. 44 Comp. Gen. 337, 339 (1964).

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This action concerns an appeal by Mr. Philip E. Schaeffer, an employee of the Internal Revenue Service (IRS), for reconsideration of a settlement certificate dated May 17, 1976, issued by our Claims Division, that disallowed Mr. Schaeffer's claim for moving expenses incurred incident to a permanent change of station from Brookhaven, New York, to Philadelphia, Pennsylvania. Mr. Schaeffer's claim was disallowed on the basis that it is primarily within the discretion of the employing agency to determine whether a transfer is in the interest of the Government or for the convenience of the employee and because the IRS, exercising that discretion, had determined the transfer to be in the interest of the employee.

The submission shows that Mr. Schaeffer applied and was selected for a position as a Quality Review Clerk at the IRS Center, Philadelphia, Pennsylvania. Mr. Schaeffer applied for reimbursement of his moving expenses, but that request was denied. On October 23, 1974, Mr. Schaeffer was advised of the denial of his moving expenses by a personnel staff specialist of the IRS. At that time he indicated that he still desired to accept the position in Philadelphia and that he would report for duty by November 10, 1974.

Mr. Schaeffer contests the determination reached by both the IRS and our Claims Division that moving expenses were not allowable because the transfer was primarily for his convenience or benefit. He alleges that he was transferred to the IRS Center at Philadelphia to aid in setting up a quality review program. Thus, he maintains that the transfer was primarily in the interest of the Government. Mr. Schaeffer also alleges that he is entitled to have his moving expenses reimbursed since he was advised by the Branch Chief that his moving expenses would be reimbursed at a later date.

An employee's entitlement to travel and transportation expenses in connection with a change of official station is governed by paragraph 2-1.3 of the Federal Travel Regulations (FPMR 101-7, May 1973) which provides in part:

"2-1.3. Travel covered. When change of official station or other action described below is authorized or approved by such official or officials as the head of the agency may designate, travel and transportation expenses and applicable allowances as provided herein are

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payable in the case of (a) transfer of an employee from one official station to another for permanent duty, Provided That: the transfer is in the interest of the Government and is not primarily for the convenience or benefit of the employee or at his request \* \* \*."

The above-quoted regulation precludes the payment of travel and transportation expenses where the change of official station is not in the interest of the Government but is primarily for the convenience or benefit of the employee. Our Office has previously stated in B-184251, July 30, 1975, that it is within the discretion of the employing agency to determine in any given case whether a transfer is in the interest of the Government or for the convenience or benefit of the employee.

There is no indication in the submission to show that Mr. Schaeffer was ordered or induced to apply for the position as Quality Review Clerk. In fact, we have informally ascertained that Mr. Schaeffer initiated the transfer by filing an application for reassignment with the Philadelphia office before there was a vacancy in the position of Quality Review Clerk, and that the cover letter accompanying his application stated that Mr. Schaeffer would be willing to pay his own travel and transportation expenses if he were selected for a position in the Philadelphia office. Moreover, we have been informed that of the four best qualified candidates for the position, three were local employees already working in the Philadelphia office, and that Mr. Schaeffer's selection over those three candidates was an exception to the IRS Philadelphia Center's policy of selecting local candidates for promotion from within. Thus, the IRS Philadelphia office, in the belief that the transfer was primarily for Mr. Schaeffer's convenience, rather than in the interest of the Government, offered him the position but clearly informed him that his travel and transportation expenses would not be reimbursed by the IRS if he accepted the position as Quality Review Clerk. With this knowledge, Mr. Schaeffer accepted the position as Quality Review Clerk.

Based upon the record, we believe that the IRS properly exercised its discretionary authority in determining the transfer to be for Mr. Schaeffer's convenience. Since he was notified of

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that decision before he accepted the position, Mr. Schaeffer is not entitled to reimbursement under the above-cited regulation. See B-185077, May 27, 1976, and B-14430, March 30, 1976.

Mr. Schaeffer's argument that he is entitled to reimbursement because he was advised by a Branch Chief that the moving expenses would be reimbursed at a later date is not persuasive. Claimant acknowledges that no moving expenses were authorized and that he was so informed prior to the alleged indication by the Branch Chief that such expenses would be reimbursed at a later date. We have held that legal rights and liabilities in regard to travel allowances vest at the time the travel is performed under the travel orders and that such orders may not be revoked or modified retroactively so as to increase or decrease the rights which have become fixed under the applicable regulations. An exception may be made only when an error is apparent on the face of the orders and all facts and circumstances demonstrate that some provision previously determined and definitely intended has been omitted through error or inadvertence. B-175433, April 27, 1972. Even if such advice were erroneously given to Mr. Schaeffer, the United States could not be held liable for his moving expenses because, in the absence of specific statutory authority, the United States is not liable for the erroneous actions of its officers, agents, or employees even though committed in performance of official duties. 44 Comp. Gen. 337, 339 (1964). Moreover, it is a well established principle that anyone entering into an arrangement with the Government takes the risk of having accurately ascertained that the agent who purports to act for the Government stays within the limits of his authority. Federal Crop Insurance Corp. v. Merrill, 332 U. S. 380 (1947).

For the foregoing reasons, the settlement of May 17, 1976, disallowing Mr. Schaeffer's claim for moving expenses incurred incident to transfer of official duty station is sustained.

  
Deputy Comptroller General  
of the United States