

DOCUMENT RESUME

62287 - [A1432420]

[Failure to Fulfill Term of Service Agreement]. B-187010. May 13, 1977. 3 pp.

Decision re: William C. Moorehead; by Robert F. Keller, Acting Comptroller General.

Issue Area: Personnel Management and Compensation: Compensation (305).

Contact: Office of the General Counsel: Civilian Personnel.

Budget Function: General Government: Central Personnel Management (805).

Organization Concerned: Forest Service.

Authority: P.T.R. (PPMR 101-7), para. 2-1.5a(1)(b). B-170392 (1970). B-169880 (1970). 30 Comp. Gen. 457.

A determination was requested by Orris C. Huet, an authorized certifying officer of the Department of Agriculture, concerning reimbursement of an employee's expenses for return travel from an overseas post after separation from his position prior to completion of his service agreement. The facts indicated that there would be justification for an agency determination that separation was beyond the employee's control, and therefore expenses would be reimbursable. (HTW)

Carty
Clerk

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DECISION



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

FILE: B-187C10

DATE: May 13, 1977

MATTER OF: William C. Moorehead - Failure to fulfill
term of service agreement

DIGEST: Employee appointed as road locator in Alaska was unable to perform rigorous duties of position and was terminated prior to end of term of Service Agreement. Whether separation was for reasons beyond employee's control and acceptable to agency is for agency determination. Record here supports inference that separation was for benefit of Government and for reasons beyond employee's control. Voucher for return travel to Ithaca, New York, may be certified for payment upon such determination.

Orris C. Huet, an authorized certifying officer of the Department of Agriculture, by letter of July 14, 1976, has requested a determination by this Office of the propriety of reimbursing Mr. William C. Moorehead for travel expenses incident to return from an overseas post of duty prior to completion of his service agreement.

Mr. Moorehead, a resident of Ithaca, New York, was appointed to the position of Civil Engineering Technician (Road Locator) in Tongass National Forest at Ketchikan, Alaska, with the U.S. Forest Service. As a condition of his employment and in consideration of the Government's payment of his transportation expenses from Ithaca to Ketchikan, Mr. Moorehead executed an agreement on May 5, 1975, to remain in the employment of the United States Government for a minimum period of 12 months, unless sooner separated for reasons beyond his control and acceptable to the Forest Service. The agreement also provided that return transportation expenses to the continental United States for Mr. Moorehead, his dependents and household would be allowed, provided that he remained in the employ of the Government for 24 months, unless separated for reasons beyond his control and acceptable to the Government.

Mr. Moorehead failed to satisfactorily perform his duties in the required fashion during his probationary period and was terminated effective September 26, 1975. It appears that the principal reason for Mr. Moorehead's separation was because of his apparent inability to satisfactorily accomplish the duties

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of the position to which appointed. On October 3, 1975, Mr. Moorehead appealed his separation to the Civil Service Commission. The Federal Employee Appeals Authority refused to hear his case because it failed to meet appeals requirements for probationary employees. In December 1975 Mr. Moorehead returned at his own expense to Ithaca, New York, the place from which he was hired, and he now claims reimbursement for the expense of this return travel. The certifying officer questions whether payment may be made and, if not, asks whether it is necessary for the Forest Service to collect from Mr. Moorehead the amount previously paid by the Government to transport him from Ithaca to Ketchikan in May 1975.

The requirement for the execution of service agreements by employees appointed to posts of duty outside the conterminous United States, such as Mr. Moorehead, is set forth in paragraph 2-1.5a(1)(b) of the Federal Travel Regulations (FTR), FPMR 101-7 (May 1973). Under this provision, Mr. Moorehead, who left the Government service before the expiration of 12 months, may not be allowed return transportation expenses and must repay to the Government the cost of his transportation expenses to the overseas post of duty, unless his separation was for reasons beyond his control and acceptable to the agency. The determination as to whether an employee's separation from the service is for a reason beyond his control and acceptable to the agency concerned must be made by the employing agency. In the absence of evidence that such a determination is arbitrary or capricious, this Office will be governed by the decision of the agency. B-170392, August 5, 1970; B-169880, July 6, 1970.

In considering this matter, however, we note that Mr. Moorehead was named in the certificate of eligibles furnished to the Forest Service by the Civil Service Commission and was, therefore, regarded as qualified for the position offered, even though he indicates that his prior experience was primarily as a civil engineering technician in construction inspection.

Once on the job, however, the Forest Service found that his technical abilities were not sufficient and that his physical condition was not good enough to meet the demands of the job. Accordingly, he was separated from his probationary appointment for deficiencies in his work performance.

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As a final matter, the employment agreement provided that separation for reasons of impaired health or disability known by the employee to exist but not disclosed prior to entering on duty, would constitute a violation of the agreement by the employee. The reports of Mr. Moorehead's poor physical condition do not indicate it was caused by any pre-existing impairment or disability. Instead, it appears to have been caused by the arduous demands of the position, which were apparently not fully recognized by the employee prior to entry on duty.

We believe the foregoing facts present a reasonable basis for an administrative finding by your agency that the employee's separation was for reasons beyond his control and acceptable to the Government. In that regard, see 30 Comp. Gen. 457 (1951) wherein an employee who failed a training course was viewed as having been separated for a reason beyond his control.

Therefore, upon such an administrative determination being made, the return travel expenses in question may be allowed if otherwise proper. Also, in that event, no collection action need be taken for sums previously paid for travel to Ketchikan in 1975.


Acting Comptroller General
of the United States