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**DECISION**



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

FILE: B-188366

DATE: January 6, 1978

MATTER OF: John J. Fischer - Payment of relocation expenses prior to actual transfer

- DIGEST:
- (1) Employee arranged transportation of his family on May 29, 1973, in anticipation of permanent transfer from one agency to another. Although he was not officially notified of transfer until June 6, 1973, he may be reimbursed for expenses incurred on basis that he was informed on May 18, 1973, that he would be transferred upon confirmation of appointment by headquarters.
  - (2) Employee transferred from Ketchikan, Alaska, to Detroit, Michigan, claims relocation expense of an amount representing the difference between 10 cent mileage rate authorized in his travel orders and 6 cent rate actually received for mileage allowance for use of privately owned vehicle while travelling alone. FTR para. 2-2.3b (May 1973) allows a maximum of 6 cents per mile when the employee travels alone. Prescribed FTR rates are mandatory.

This action is a response to an appeal by Mr. John J. Fischer of our Claims Division settlement dated November 9, 1976, disallowing his claim for reimbursement of expenses incurred by him in connection with his transfer from Ketchikan, Alaska, to Detroit, Michigan. The Claims Division settlement disallowed the claim because the record did not appear to evidence a clear administrative intent to transfer Mr. Fischer to Detroit at the time the claimed air travel expenses were incurred.

Prior to travel orders being issued on October 23, 1973, authorizing Mr. Fischer's transfer to Detroit, Mr. Fischer reports that he was offered a position as an Equal Opportunity Specialist

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in the Detroit District Office of the Equal Employment Opportunity Commission (EEOC) by the Detroit District Director on May 18, 1973, and that his selection was confirmed by a personnel specialist in the Chicago office on May 21, 1973, albeit with the contingency that his appointment had to be approved in Washington, D.C., by a personnel management specialist. It was reportedly explained to Mr. Fischer that this final approval might take a few weeks although it was "just a formality." The anticipated approval from the Washington personnel management specialist was forwarded to Mr. Fischer by letter dated June 6, 1973.

The Vice-Chairman, EEOC, informed our Office by letter dated September 16, 1975, that "wwe are unable to verify the date that Mr. Fischer was officially offered the position \* \* \* in our Detroit District Office \* \* \*. There is on record a copy of a letter dated June 6, 1973, to Mr. Fischer confirming his selection and information relative to his reporting date of June 25, 1973. This letter was sent by a personnel management specialist in our headquarters Personnel office." Our Office has been informed by a headquarters personnel management specialist referred to above that contemporaneous with the processing of Mr. Fischer's transfer, the regional offices (i.e., Chicago) were delegated authority to make personnel selections, and that it was possible that the Chicago personnel specialist in question had authority to finalize Mr. Fischer's selection. The personnel management specialist further stated that his approval evidenced by the letter dated June 6, 1973, if required, was merely a verification that the district had a proper basis for the appointment, and as long as the appointee qualified for the position under applicable law and regulation, he would not have had authority to disapprove the appointment.

Mr. Fischer reports that in reliance upon the advice given him by the Detroit District Director and the Chicago personnel specialist, he arranged for his family to fly out of Ketchikan, Alaska, on May 23, 1973, incurring travel expenses of \$450.96. It is noted that nothing in the record controverts the claims by Mr. Fischer as to the advice given him or the dates when such advice is reported to have been given.

We have held that reimbursement of moving expenses incurred prior to and in anticipation of transfer of official duty station may be allowed if the travel order subsequently issued includes authorization for the expenses on the basis of a "previously

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existing administrative intention, clearly evident at the time the expenses were incurred by the employee, to transfer the employee's headquarters." 48 Comp. Gen. 395, 396 (1968). What constitutes a clear intention to transfer an employee depends on the circumstances in each case.

It is stated that Mr. Fischer was notified on June 6, 1973, that his appointment had been approved. However, the record reveals Mr. Fischer's uncontroverted statement that he was notified as early as May 18, 1973, and again on May 21, 1973, that he was accepted for appointment albeit subject to final headquarters approval. Although the proposed permanent transfer depended on an intervening event, the headquarters approval, there was an administrative intention on May 18, 1973, to transfer Mr. Fischer to the location of his new appointment when the confirmation was received. Since Mr. Fischer incurred the expenses for which reimbursement is questioned only after being told that he was offered the new position, we believe that the test stated above has been complied with and that he may be reimbursed for the transportation expenses of his family.

Mr. Fischer also appeals that portion of the settlement certificate that reduced his travel order authorization of 10 cents per mile for travel by privately owned vehicle from Ketchikan to Detroit to an allowance of 6 cents per mile for that portion of his trip in which he travelled alone. The reduction was based on Federal Travel Regulations (FTR) (FPMR 101-7) para. 2-2.3b which prescribes as a condition precedent to a mileage allowance of greater than 6 cents that the automobile be occupied by the employee and at least one member of his immediate family. The conditions of travel stated in the mileage allowances paragraphs are mandatory. Since Mr. Fischer occupied his automobile alone while it was in transit from Ketchikan to Cudahy, Wisconsin, only the lower mileage allowance may be paid for that portion of his travel. The discrepancy between the amount authorized in Mr. Fischer's travel orders, which is the basis of Mr. Fischer's appeal, and the amount authorized by FTR para. 2-2.3b has been explained by the Vice-Chairman, EEOC, as follows:

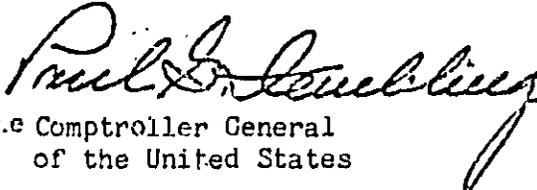
"According to the records of the Office of Financial Management, Mr. Fischer was reimbursed mileage expenses via POV at a rate of 10¢ per mile as authorized in EEOC Order 054-3-019 for the employee and four family members.

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"Later Mr. Fischer submitted a claim for air travel expenses for his spouse and three children which was disallowed. It must be stated that Mr. Fischer's claim was submitted as if he traveled via POV with his family. However, during this reexamination, we have concluded that Mr. Fischer traveled via POV alone and is not entitled to reimbursement at the 10¢ per mile. Rather, he should have been reimbursed at a lesser rate of 6¢ per mile in accordance with 101-7 2-2.3b of the FPMR."

Therefore, the apparent discrepancy is the result of a mistake of fact and the agency position is not at variance with the Federal Travel Regulations.

A settlement in accordance with this decision will be issued in due course.

  
For the Comptroller General  
of the United States

UNITED STATES GOVERNMENT

GENERAL ACCOUNTING OFFICE

# Memorandum

TO : Director, Claims Division

January 6, 1973

FROM : *Paul G. Leavelle*, For the  
Comptroller General

SUBJECT: Claim of John J. Fischer - B-185366-O.M.

Returned herewith is file 2-2600079 forwarded by your memorandum of February 7, 1977, along with our decision of today, B-185366. The decision reverses in part and sustains in part your settlement action. A settlement should be issued in Mr. Fischer's favor in the amount found due in accordance with the attached decision.

Attachments