

DECISION

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

162

FILE: B-188815

DATE: May 8, 1978

MATTER OF:

X
, et al. - Relocation Expenses -
Cancelled Transfer

- DIGEST:**
1. Employees were personally informed that their function would be relocated on specific date. Preliminary offer of transfer, although advising that separations may be possible, offered agency assistance in relocating employees to receiving location or elsewhere on priority basis. Such preliminary offer of transfer constitutes communication of intention to transfer employees, and expenses incurred after that date should be further considered by certifying officer to ascertain whether they may be paid.
 2. Agency intended to transfer employees and made firm offers of employment at new duty station. Employees did not execute service agreements because transfer was cancelled. Twelve-month service obligation prescribed by 5 U.S.C. 5724(i) (1970) is condition precedent to payment of relocation expenses. Since more than 2 years has elapsed since transfer was cancelled, service agreements need not be executed. However, employees must have remained in Government service for 1 year from date on which transfer was cancelled.
 3. Agency intended to transfer employees and made firm offers of employment at new station. Travel orders were not issued because transfer was cancelled. Absence of travel orders is not fatal to claims for relocation expenses if there is other objective evidence of agency's intention to effect transfer. In present case, written offers of employment at new location to begin at specific time constitutes such objective evidence.

By a letter dated December 9, 1977, Colonel William E. Dyson, USA, Executive of the Per Diem, Travel and Transportation Allowance Committee, forwarded a request from Captain R. C. Schildknecht, USAF, Accounting and Finance Officer, for a decision concerning the claims of certain civilian employees of the Air Force for relocation expenses incurred incident to a cancelled transfer. *Sept. 77*

PUBLISHED DECISION

57 Comp. Gen. 447

B-188815

The record indicates that the Air Force intended to transfer the headquarters of the Air Force Communications Service from Richards-Gebaur Air Force Base (AFB), Missouri, to Scott AFB, Illinois. On February 7, 1975, the civilian personnel officer at Richards-Gebaur AFB sent a preliminary offer of transfer to all civilian personnel affected by the transfer to ascertain whether they were willing to relocate. This action was followed by a letter dated April 25, 1975, from the civilian personnel officer at Scott AFB to each of the claimants advising them that their function had been transferred and making firm offers of employment to them at that location. However, on June 5, 1975, the Federal District Court for the Western District of Missouri, Western Division, issued a preliminary injunction prohibiting the planned transfers. In response to this decision, the civilian personnel officer at Scott AFB cancelled the previously issued offers of employment on June 10, 1975. Since the transfer was cancelled, permanent change-of-station orders were never issued to the employees.

Acting in reliance upon the notice of transfer and the February 7, 1975 preliminary offer of transfer, each of the six claimants here began to relocate. Specifically, claimants

entered into contracts to sell their homes near Richards-Gebaur AFB. In addition, signed contracts to purchase new residences in the vicinity of Scott AFB, the intended new duty station. Each of the above contracts was executed by the claimants prior to receipt on April 25, 1975, of a firm offer of employment at Scott AFB, but after receipt of the preliminary notice of transfer of their function to that location. Thus, each of the claimants requests payment of certain real estate expenses. In addition, Ms. has claimed certain expenses incurred in connection with relocating to Scott AFB, where she ultimately obtained employment.

The certifying officer has raised three basic objections to paying the above claims. First, he notes that in each case, the claimants entered into a real estate contract before receipt of a firm offer of employment at Scott AFB. Second, no service agreement was executed by the claimants, as required by 5 U.S.C. 5724(i).^{Code} Finally, no travel orders were ever issued directing the claimants to transfer to Scott AFB.

B-188815

With respect to expenses incurred incident to a cancelled transfer, we have held that, where a transfer has been cancelled and certain expenses would have been reimbursable had the transfer been effected, an employee may be reimbursed for expenses incurred in anticipation of the transfer and prior to its cancellation. B-177439, February 1, 1973. Further, when by reason of the cancellation, the employee's duty station is not changed, we have treated the employee for reimbursement purposes, as if the transfer had been consummated and he had been retransferred to his former station. 54 Comp. Gen. 71 (1974).

The operative factors governing our decisions concerning reimbursement of expenses incurred incident to cancelled transfers are the agency's clear intention to effect the transfer, the communication of that intention to the employee, and the employee's good faith actions taken in reliance on the communicated agency intention. Matter of , B-187405, March 22, 1977. What constitutes an agency's intention to transfer an employee depends on the facts in each case. Thus, we have held that a letter to the employee notifying him that his position was surplusage coupled with an offer to help find another job constituted a clear intention to transfer the employee. B-165796, February 12, 1969. There, we held that reimbursement of residence transaction expenses was proper even though the employee closed the sale of his house before being offered another position since he contracted to sell it after receipt of the surplusage notice. Similarly, we have held that an official announcement that all essential functions of an installation were to be relocated demonstrated a clear intention to transfer an employee. B-174051, December 8, 1971. Of course, if the employee separated from Government service before the transfer was consummated or cancelled, reimbursement may not be made. 52 Comp. Gen. 8 (1972).

Thus, the first question presented by the certifying officer is basically whether, at the time the employees here incurred the claimed expenses, they had been informed of an intention to transfer them. In the present case, each claimant received a preliminary offer of transfer of function on February 7, 1975. This notice stated specifically that the employee's function was scheduled to transfer to Scott AFB on or about July 1, 1975. Although the preliminary offer noted that employees may be affected by demotions or separations, the document basically stated that the

B-188815

affected employees would be entitled to accompany the function to the new location provided an appropriate position existed there. The notice further provided:

" * * * every effort will be made to locate an appropriate and acceptable position for you at this activity. In addition, you will be assisted in finding suitable placement opportunities at other Air Force and Department of Defense activities under the provisions of the DOD Nationwide Priority Referral System."

In view of the above authorities, we hold that the February 7, 1975 preliminary offer may be considered a definite communication of an intention to transfer the affected employees, and expenses incurred after that date should be further considered by the certifying officer to ascertain whether they are otherwise payable. The first question is answered accordingly.

The second issue presented is whether the claimants may be paid despite the lack of a service agreement in each case. The statutory basis for requiring the execution of a service agreement is found in 5 U.S.C. 5724(i) which provides that relocation allowances may be paid only after the employee agrees in writing to remain in the Government service for 12 months after his transfer, unless separated for reasons beyond his control that are acceptable to the agency concerned. In 54 Comp. Gen. 71 (1974), we held that an employee involved in a cancelled transfer either should be required to execute a second service agreement or an amendment to the original service agreement should be issued designating the original duty station as the new duty station. In such cases the 12-month period of required service begins to run from the date on which the employee is advised of cancellation of the originally contemplated transfer. In that decision, we noted that the service obligation created by the statute is not contractual, but is a statutory condition precedent to payment of relocation expenses. Thus, we held that an employee is bound by the 12-month service obligation even though he did not execute a service agreement. Therefore, where an employee has in fact been continuously employed for a 12-month period following a transfer, the condition precedent has been satisfied, and a service agreement need not be executed. Matter of
B-188048, November 30, 1977. Nevertheless, absent the

B-188815

execution of a service agreement or the actual satisfaction of the 12-month service obligation, there is no authority for an employee to receive or retain relocation expense reimbursement.

In the present case, the proposed transfer was cancelled before the claimants had the opportunity to execute service agreements. Since, however, more than 2 years have elapsed since the transfers were cancelled, the certifying officer may readily ascertain the extent to which each claimant in fact satisfied the 12-month service obligation. Accordingly, the actual execution of a service agreement is no longer required by the claimants here. However, before any reimbursement may be authorized, each claimant must have remained in the Government service for 1 year from June 10, 1975, the date on which the proposed transfers were cancelled.

The final issue raised by the certifying officer is whether the claimants may be paid despite the absence of travel orders in each case. Although the Federal Travel Regulations do not expressly state what constitutes the authorization of a transfer, travel orders are generally recognized as being the authorizing document. 54 Comp. Gen. 993, 998 (1975). Thus, in the ordinary case, the agency's intention to authorize a transfer is objectively manifested by the execution of travel orders. However, the absence of travel orders is not fatal if there is other objective evidence of the intention to make a transfer.
supra; B-173460, August 17, 1971.

The facts in the present case include written offers of employment at Scott AFB delivered to the employees, including the claimants, who were intended to be transferred to Scott. Those offers specifically state:

"If you accept this offer the transfer will be effected not earlier than 60 days from receipt of this specific notice. Your specific reporting date will be arranged with you later. Travel should commence in time to reach your destination on or before that date. Any travel for yourself and your dependents and transportation of household goods will be at government expense as authorized by applicable regulations. Travel orders will be issued by Richards-Gebaur prior to your departure."

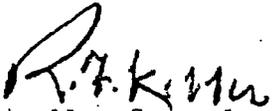
B-188815

We believe that the record sufficiently demonstrates that the Air Force intended to transfer such employees, and that the transfer was cancelled by reason of the injunction issued by the Federal District Court. The written offers of employment at Scott AFB, then, constitute the objective evidence of the intention to make a transfer required by our decision in Crumpacker. Thus, the absence of ~~travel orders~~ here does not prohibit reimbursement of otherwise allowable expenses.

The absence of travel orders remains, however, significant in the present matter since our decisions merely provide that an employee's eligibility for certain relocation expenses will not be adversely affected if they are incurred in anticipation of the transfer, where the transfer is subsequently consummated or cancelled. 54 Comp. Gen. 993 (1975). Thus, ~~certain expenses~~, such as house-hunting travel or temporary quarters subsistence expenses, may not be reimbursed if incurred in anticipation of a transfer since the Federal Travel Regulations (FPMR 101-7, May 1973) require a specific authorization or provide that the period of the claim may not begin until the transfer is authorized. Certain residence transaction expenses may, however, be reimbursed, notwithstanding the absence of travel orders where the intended transfer is clearly manifested. See B-173460, supra.

The individual items of expense constituting the six claims should be administratively examined in order to ascertain the propriety of payment in accordance with the governing regulations and decisions of this Office. In this connection, we note that Mr. Orville H. Myers has claimed reimbursement of a loan discount or points. Such an item is generally regarded as a finance charge and, therefore, is not reimbursable. B-189591, September 19, 1977. Similarly, the claim of _____ should be examined to ascertain whether a claimed "loan commission" likewise constitutes a nonreimbursable finance charge.

Disposition of these claims should administratively be made in accordance with the above.


Deputy Comptroller General
of the United States

1. OFFICERS AND EMPLOYEES
 - Transfers
 - Relocation expenses
 - Transfer not effected

OFFICERS AND EMPLOYEES

- Transfers
- Cancellation
- Government liability

2. OFFICERS AND EMPLOYEES
 - Transfers
 - Service agreements
 - Failure to execute

3. ORDERS
 - Failure to issue
 - Reimbursement authorized

OFFICERS AND EMPLOYEES

- Transfers
- Relocation expenses
- Authorization

OFFICERS AND EMPLOYEES

- Transfers
- Cancellation
- Government liability