

FILE: B-193631

DATE: May 3, 1979

10,031

MATTER OF:

John G. Sears

Request For Reimbursement of Personal Funds Expended Incident to Permanent Change of Station

DIGEST:

Employee of Department of Health, Education and Welfare's (HEW) Office of Child Support Enforcement, Honolulu, Hawaii, was transferred to HEW Audit Agency's Jefferson City, Missouri Branch Office under a no-cost travel order issued at his request. He may not be retroactively reimbursed for the expenses of his transfer since he requested and otherwise took the initiative in obtaining the transfer. Also, at the time of the transfer he knew and understood that he would be personally liable for his travel and transportation costs since he requested the no-cost travel orders and his travel orders stated that the transfer was for his benefit and at his request.

This action is in response to a request from Ms. Martha R. Johnson, Authorized Certifying Officer, Department of Health, Education, and Welfare (HEW), Region VII, for an advance decision regarding a voucher submitted by Mr. John G. Sears requesting reimbursement of personal funds expended incident to a permanent change of station.

Mr. Sears indicates that in July 1978, while he was an employee with HEW's Office of Child Support Enforcement in Honolulu, Hawaii, he learned of an employment vacancy in the HEW Audit Agency's Jefferson City, Missouri Branch Office, Region VII. After having discussed the possibility of a transfer with Region VII Audit Agency officials, Mr. Sears received and accepted an offer of employment with that office. At the time of his acceptance Mr. Sears was informed that sufficient funds were not available to pay for his travel and transportation expenses. Therefore, at Mr. Sears' request, a no-cost travel order was issued for his protection while in travel status.

Mr. Sears maintains that even though his permanent change of station move was effected under a no-cost travel order he should be reimbursed for two reasons. First, Mr. Sears contends that the move was for the benefit of the Audit Agency, because, at the time of his transfer the Audit

005164

Agency had sustained a loss of auditors in Region VII and his 8 years of previous experience as a HEW auditor helped to fill this void. Second, Mr. Sears contends that since the Agency normally reimburses employees for such moves, he too should be reimbursed.

An employee's entitlement to travel and transportation expenses in connection with a change of 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 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 or at his request. In Matter of Donald P. Fontanella, B-184251, July 30, 1975, we distinguished the two bases for the transfer of an employee and stated:

"* * * if an employee has taken the initiative in obtaining a transfer to a position in another location, an agency usually considers such transfer as being made for the convenience of the employee or at his request, whereas, if the agency recruits or requests an employee to transfer to a different location it will regard such transfer as being in the interest of the Government.* * *

It should be noted that paragraph 2-1.3 of the FTR does not specify factors which render the transfer of an employee to be in the interest of the Government or for the personal benefit or convenience of the employee. Thus, the fact that there may not have been sufficient funds in the 1978 budget to pay for Mr. Sears' move can not form the basis for denying him relocation expenses if his transfer is found to be in the interest of the Government and not primarily for his personal benefit. 56 Comp. Gen. 709 (1977).

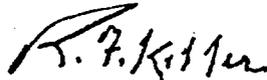
While the record does not contain a specific finding that Mr. Sears' transfer was in the interest of the Government, it is clear that Mr. Sears took the initiative in obtaining the transfer. Also, at the time of the transfer Mr. Sears knew that he would be personally liable for all travel and transportation expenses since he was so advised in advance and his travel orders stated in pertinent part:

"Employee is being transferred from Office of Child Support Enforcement at Honolulu, Hawaii, to the Audit Agency at Jefferson City, Missouri. This transfer is for the benefit and at the request of employee. Therefore, travel and transportation expenses are not authorized. This travel order authorizes employee to travel on official government business from Honolulu, Hawaii, to Jefferson City, Missouri, at his own expense.* * *"

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 fact of the orders and all facts and circumstances demonstrate that some provision previously determined and definitely intended has been omitted through error or inadvertance. B-175433, April 27, 1972. In the present situation no such error has occurred. Therefore, while Mr. Sears' services in his new position presumably also benefit the Government, since he not only took the initiative in obtaining the transfer but also knew

and understood that he would be personally liable for all expenses since he requested the no-cost travel orders, the transfer is considered to be primarily for his convenience and benefit.

Accordingly, Mr. Sears' claim for travel and transportation expenses incurred incident to his permanent change of station is denied.



Deputy Comptroller General
of the United States