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DECISION



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

[Request for Reconsideration]

FILE: B-196260

DATE: March 11, 1981

MATTER OF: Johnny R. Dickey -
Violation of service agreement

DIGEST: Employee who had fulfilled overseas service agreement with first agency transferred to position in the United States with another agency and thereafter breached service agreement with second agency. Notwithstanding violation of service agreement, employee is not required to refund transfer expenses paid by second agency where those were solely for transportation of household goods and employee's own travel, since he was entitled to such expenses as a consequence of having satisfied overseas service agreement with first agency.

Mr. Johnny R. Dickey requests reconsideration of our Claims Division's September 17, 1979 denial of his claim for refund of transfer-related expenses collected as a result of his breach of a service agreement.

The record indicates that Mr. Dickey was transferred on February 16, 1972, from Corbin, Virginia, to Ewa Beach, Hawaii, in connection with his continued employment with the National Oceanic and Atmospheric Administration, Department of Commerce (NOAA). At that time, in accord with 5 U.S.C. § 5724(d) (1976), Mr. Dickey signed a service agreement in which he designated Memphis, Tennessee, as his actual place of residence and by which he agreed to remain in Government service for a period of 2 years following the effective date of his transfer unless separated for reasons beyond his control. Mr. Dickey remained with the NOAA in Hawaii until September 22, 1977, at which time he transferred to the U.S. Geological Survey, Department of the Interior (Geological Survey), Metairie, Louisiana. Incident to that transfer Mr. Dickey signed a service agreement by which he agreed to remain in Government service for 1 year following the date of his transfer and in consideration of which he was reimbursed \$1,404.83 for transportation of household goods and \$148.04 for airfare from Hawaii to Los Angeles. Because he resigned from his position with the Geological Survey before he completed 1 year of service, the Geological Survey set off the net amount of his final salary and lump-sum leave payments against his indebtedness of \$1,552.84.

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B-196260

Mr. Dickey appeals from our Claims Division's decision of September 17, 1979, upholding the Geological Survey's determination that he was indebted in the \$1,552.84 amount as a result of having violated the 1-year service agreement. In support of his claim, Mr. Dickey points out that he was entitled to return travel and transportation expenses under 5 U.S.C. § 5724(d) because he satisfied his service obligation incident to his employment in Hawaii with NOAA. He claims that despite his violation of his employment agreement with the Geological Survey, his right to be reimbursed for these return travel and transportation expenses was not extinguished. He maintains that he should not have been required to sign this new agreement because the cost of his move from Ewa Beach, Hawaii, to Metairie, Louisiana, was identical to the amount his move would have cost if he had returned to Memphis, Tennessee, his actual place of residence.

When an employee who has satisfied his overseas service agreement is returned to the continental United States for separation he is entitled to expenses of travel and transportation for himself, his family and household goods to his place of actual residence in the United States or, at his election, the actual costs of travel and transportation to some alternate point, the cost of which does not exceed that to his place of actual residence. 5 U.S.C. § 5724(d) (1976); B-195180, October 24, 1979; B-164084, May 29, 1968. However, if the employee, prior to departure from his overseas duty station, accepts a transfer of official station from a post outside the continental United States to one within the United States, he is entitled only to the travel and transportation expenses to his new official station, not his place of actual residence. Id. Moreover, pursuant to 5 U.S.C. § 5724(e), these expenses would be paid by the agency to which he transfers. B-164251, June 26, 1968.

While there is no statutory requirement for execution of a service agreement incident to a transfer from overseas to the United States, we have held that an agency has authority to refuse to authorize or approve payment of any expense involved in the travel or transportation of an employee in connection with such a change of official station until the employee concerned executes an agreement to remain in the Government service for a specified period of time. 47 Comp. Gen. 122, 125 (1969), B-163726, May 8, 1968. Such an agreement having been executed by the employee in the instant case, the employee is bound by the provisions thereof. Id.

B-196260

Ordinarily, Mr. Dickey would have been entitled to be reimbursed by the Geological Survey for any expenses he incurred incident to his move from Hawaii to Louisiana. 5 U.S.C. § 5724(d) (1976). See also 5 U.S.C. § 5724(e) regarding the requirement that expenses of transfer be paid by the gaining agency. However, since he violated the service agreement which the Geological Survey required him to execute, he is only entitled to be reimbursed for expenses incurred pursuant to his move to the extent that these expenses did not exceed the cost of such travel and transportation to his actual place of residence, Memphis, Tennessee--the amount he would have been entitled to receive had he not transferred to the Geological Survey. Mr. Dickey's right to this sum vested once he completed his required tour of duty with the NOAA and only his entitlement to expenses incurred in excess of that amount was contingent upon his satisfying the service agreement with his new employing agency.

The transfer expenses reimbursed by the Geological Survey included only expenses related to Mr. Dickey's own travel and movement of his household goods. Since these particular expenses do not exceed the cost of such travel and transportation to his actual place of residence, they are to be considered allowances to which he was entitled as an incident to his return from overseas. See B-164804, May 29, 1968. Moreover, incident to his appeal, Mr. Dickey states that he did not claim and was not reimbursed \$348.60 in mileage and per diem expenses for the portion of his trip from Los Angeles to Louisiana. These expenses also may be paid to Mr. Dickey incident to his transfer from funds of his new employer the Geological Survey provided that the total amount he is reimbursed does not exceed the cost of transportation and travel from Hawaii to Memphis, Tennessee.



Acting Comptroller General
of the United States