

DECISION

19007
THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

FILE: B-199943

DATE: August 4, 1981

MATTER OF: Norman C. Girard - Relocation Expenses

DIGEST: Transferred employee's entitlement to relocation expenses is contingent upon, among other things, determination that transfer is not primarily for the convenience or benefit of employee or at his request. Primary responsibility for determination rests with agency. GAO will not disturb agency's determination unless clearly erroneous, arbitrary or capricious. Neither possible misconception by agency as to why employee was building house at new duty station prior to transfer nor fact that employee was selected for announced vacancy is sufficient in and of itself to overturn agency's determination that transfer was primarily for employee's benefit.

The issue in this case is whether the determination of the Internal Revenue Service (IRS) that the transfer of Mr. Norman C. Girard, one of its employees, was primarily for his convenience or benefit or at his request, thereby disqualifying him for relocation expenses, should be overturned or allowed to stand. As hereinafter explained, we find nothing in the record sufficient to overturn the agency's determination.

Effective January 28, 1979, Mr. Girard, an employee of the Internal Revenue Service, Western Region, was reassigned from a Revenue Officer position in San Jose, California, to a position in Santa Cruz, California, bearing the same title and GS series number. He was employed in Santa Cruz at the same GS-11, step 3 salary he earned in San Jose. Under the "Remarks" section of the Standard Form 50 which documents his reassignment it is stated, "Moving Expenses under P.L. 89-515 are not authorized." Mr. Girard was selected for the position in Santa Cruz after applying for an announced vacancy.

[Claim for Relocation Expenses]

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Contending that his transfer was in the interest of the Government, on January 29, 1980, Mr. Girard requested reimbursement of relocation expenses in accordance with 5 U.S.C. §§ 5724 and 5724a and paragraph 2-1.3 of the Federal Travel Regulations (FTR) (FPMR, May 1973) which provides:

"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 Chief, Collection Division, San Francisco District, in denying his claim, stated that:

"While Mr. Girard was selected under vacancy announcement, the move was affected primarily for his convenience and not in the interest of the government.

"At the time that the announcement was posted Mr. Girard was building a home in Santa Cruz and had made it known that he wished to transfer to that post of duty. He approached his Group Manager about the possibility of the transfer and was told that since he would not require moving expenses, his chances of selection were very good.

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"Subsequently, Mr. Girard was selected and reported to Santa Cruz. He sold a home in San Jose and did not immediately occupy the home he was building in Santa Cruz. He purchased a residence in Santa Cruz, which he occupied for some months before he sold it and moved into the home he had been building prior to his transfer. * * *"

It is the responsibility of the employing agency to determine in any given case whether a transfer is primarily in the interest of the Government or primarily for the convenience or benefit of the employee. This Office will not overturn the agency's determination in the absence of a showing that is clearly erroneous, arbitrary, or capricious. See Bernard K. Fernald, B-189201, July 25, 1977; Ferdinando D'Alauro, B-173783. 192, December 21, 1976, and cases cited therein. In our decision, Rosemary Lacey, B-185077, May 27, 1976, we set forth three rules with regard to such determinations:

"[1] 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. [2] 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. [3] Of course, if an agency orders the transfer and the employee has no discretion in the matter, the employee is entitled to reimbursement of moving expenses."

Here, as has been indicated, IRS has determined that Mr. Girard's transfer from San Jose to Santa Cruz was primarily for his convenience or at

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his request, and therefore relocation expenses were not allowable. While acknowledging that he had several times requested this transfer, Mr. Girard contends the agency determination is wrong for two principal reasons.

First, he contends that the agency erroneously believed that he intended to reside in a house he had begun building at Santa Cruz when in fact it was an investment he intended to sell upon its completion. Because of this misconception the agency erroneously concluded that his moving of his residence to Santa Cruz was not incident to the transfer of his post of duty to that location. FTR para. 2-1.5b. However, assuming the agency was mistaken as to Mr. Girard's intentions and this mistake influenced the selection of him for transfer, this fact, it seems to us, supports rather than refutes the agency's assertion that it selected Mr. Girard primarily as an accommodation to him. Certainly the agency's mistake in this regard did not render its determination that the transfer was primarily for Mr. Girard's benefit clearly erroneous, arbitrary, or capricious.

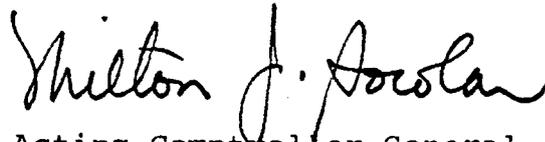
Mr. Girard's second principal contention is that since the vacancy in Santa Cruz was advertised or announced and he was selected from among those who applied, his transfer must be considered to be in the interest of the Government. The vacancy was not created for him and he had no control over the time of the transfer. Therefore, the transfer was not primarily for his benefit or convenience or at his request.

Similar arguments have previously been considered by this Office, most recently in Henry C. Miller, B-197729, August 6, 1980, and Eugene R. Platt, B-198761, September 2, 1980. From these decisions and those cited therein it appears that, while transfers resulting from promotions under merit promotion procedures are generally considered to be in the interest of the Government, this is not necessarily so for lateral transfers from one position to another of the same grade without greater known promotional potential.

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Even though they result from vacancy announcements issued under merit promotion programs such transfers are permitted exceptions to merit promotion procedures. Federal Personnel Manual chapter 335, section 1-5c(3). Therefore, the fact that a transfer resulted from a vacancy announcement is not by itself sufficient ground for this Office to overturn an agency determination that the transfer was primarily for the benefit of the employee.

Therefore, since this Office finds no basis for disturbing IRS's determination that Mr. Girard's transfer was primarily for his benefit or convenience or at his request, his claim for relocation expenses may not be allowed. 5 U.S.C. § 5724(h).

A handwritten signature in cursive script, reading "Milton J. Forster".

Acting Comptroller General
of the United States