

**DECISION**

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**THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D.C. 20548****FILE:** B-197771**DATE:** August 11, 1981**MATTER OF:** Gregory A. Akers - Relocation Expenses -  
"Break in Service"

**DIGEST:** Attorney employed by HUD, in Washington, D.C., was offered a position as law clerk to a Judge of the U.S. Bankruptcy Court in San Diego, California. He resigned from position with HUD on October 5, 1979, and reported for duty at San Diego on October 29, 1979. Since it was known to all parties, prior to resignation, that employee was resigning to accept another Federal position and it was the clear intent of Administrative Office of U.S. Courts to pay relocation expenses, employee's separation date from HUD may be retroactively adjusted to avoid break in service and to permit payment of relocation expenses.

This decision is in response to a request from Mr. Carl H. Imlay, General Counsel, Administrative Office of the United States Courts, as to whether Mr. Gregory A. Akers is entitled to reimbursement of relocation expenses. Mr. Akers is a former employee of the Department of Housing and Urban Development (HUD), Washington, D.C., who resigned to accept a position as a law clerk with the United States Bankruptcy Court in San Diego, California. He resigned from his position with HUD 23 days prior to reporting for duty with the Bankruptcy Court.

The issue presented by Mr. Imlay is whether there was a "break in service" so as to preclude payment of relocation expenses to Mr. Akers. For the reasons set forth hereinafter, we hold that Mr. Akers is entitled to reimbursement of relocation expenses.

The facts and circumstances involved, briefly stated, are as follows: Mr. Akers had been employed since October 1978, as an attorney in HUD's Office of the General Counsel in Washington, D.C. By letter dated September 17, 1979, the Honorable James W. Meyers,

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Bankruptcy Judge, United States Bankruptcy Court, San Diego, California, informed the Administrative Office of the United States Courts that Mr. Akers had been offered the position of Law Clerk and that he was scheduled to commence his new duties on November 1, 1979, in San Diego, subject to funding. Judge Meyers stated that, since Mr. Akers was the most qualified available candidate, his move to San Diego would be in the best interest of the Government for purposes of reimbursing moving expenses.

In a letter to Mr. Akers of September 21, 1979, Paul R. Tuell, Chief of the Procurement and Property Management Branch, Administrative Office of the United States Courts, stated that he had received Judge Meyers' letter "transferring your headquarters in your current position from an attorney in the Office of General Counsel for the Department of Housing and Urban Development to a law clerk for the Bankruptcy Court in San Diego, California, without a break in service, effective November 1, 1979." Mr. Tuell further stated that, since Judge Meyers had certified the transfer to be in the best interest of the Government, Mr. Akers' travel and transportation expenses from Washington, D.C., to San Diego, California, were authorized consistent with 5 U.S.C. § 5724 and the implementing regulations of the General Services Administration. Mr. Tuell enclosed a copy of the Federal Travel Regulations (FTR) (FPMR 101-7, May 1973) covering relocation allowances. At Mr. Akers' request, the Administrative Office by letter dated September 27, 1979, authorized temporary quarters subsistence expenses.

Mr. Akers resigned from his position with HUD effective October 5, 1979. His stated reason for resigning at that time was that he had no leave and he needed time to drive to the new duty station to locate a residence. He commenced work as a law clerk for Judge Meyers on October 29, 1979. Upon being advised of the break in service between Mr. Akers' resignation from HUD and his reporting for duty with the Bankruptcy Court, the Administrative Office rescinded the authorization of reimbursement of his relocation expenses.

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Sections 5724 and 5724a of title 5, United States Code (1976), and the implementing regulations in chapter 2 of the Federal Travel Regulations authorize the payment of the travel, transportation and other relocation expenses of an employee who is transferred in the interest of the Government from one official station or agency to another for permanent duty. Commencing with 17 Comp. Gen. 874 (1938), a long line of decisions construing these and similar statutes hold that "transfer" means a change of official station without a break in service of one workday or more. See 27 Comp. Gen. 757 (1948); 34 Comp. Gen. 204 (1954); 54 Comp. Gen. 747 (1975); Wallace E. Boulton, B-192817, December 18, 1978; and Greg T. Montgomery, B-196292, July 22, 1980.

However, this Office has approved retroactive adjustment of an employee's records where it is known prior to an employee's resignation that he is resigning in order to accept an appointment to another position within the same agency, or in another Federal agency, and where to do otherwise would deprive the employee of a benefit clearly intended to be bestowed upon him. Gary G. Dahlgren, B-191014, March 10, 1978; Lucila Ortiz-Deliz, B-184216, January 2, 1976; B-122897, April 11, 1955; B-112802, February 2, 1953; and A-87950, September 10, 1937.

In accordance with our decisions, the Federal Personnel Manual (FPM) instructs agencies that a separation for purposes of appointment to another Federal agency may be corrected after the fact to avoid a break in service.

Subchapter S-2b(1), Book III, Federal Personnel Manual Supplement 296-31, provides as follows:

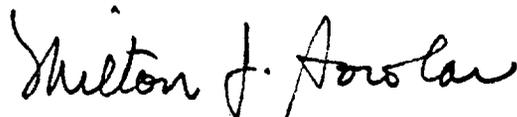
"A separation for the purposes of transfer or appointment to another Federal agency may be corrected to make it effective on the day before the transfer or appointment was actually effected (unpublished Comp. Gen.

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Decision B-112802 of February 2, 1953.  
No other substantive changes may be made  
after a separation becomes an accomplished  
fact."

In the instant case, Mr. Akers, prior to his resignation from HUD, was offered the position of law clerk by Judge Meyers and was scheduled to commence his new duties on November 1, 1979, in San Diego. These facts were known by officials of HUD, the Administrative Office of the United States Courts, and by Mr. Akers. Further, the record clearly shows that it was the intent of the gaining agency that he would be reimbursed relocation expenses. The letter of September 21, 1979, to Mr. Akers from the Administrative Office of the United States Courts expressly authorized travel and transportation expenses from Washington, D.C., to San Diego and reflected the intent that the transfer would be accomplished without a break in service. Clearly, there was no intent on the part of any of the parties concerned to deprive him of his entitlement to relocation expenses.

Accordingly, we would interpose no objection if the Department of Housing and Urban Development corrects the separation date of Gregory A. Akers to make the separation effective on the day prior to the day of his appointment to the Bankruptcy Court. Mr. Akers' status during the period prior to his appointment to the Bankruptcy Court may properly be regarded as that of an employee of HUD on authorized leave without pay. Upon the necessary correction of the records to reflect continuous Federal service during the interval in question, the Administrative Office of the United States Courts is authorized to make reimbursement of any travel and relocation expenses to which Mr. Akers is entitled under the Federal Travel Regulations.



Acting Comptroller General  
of the United States