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PLM:
William

DECISION



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

FILE: B-201633

DATE: October 29, 1981

MATTER OF: Ralph C. Harbin

DIGEST:

1. Employee was mistakenly returned to California from Vietnam in 1973 for separation. About 1-1/2 months later he was reemployed in Washington State. After a timely appeal of the separation the Civil Service Commission, in 1978, found that he had been improperly separated. The separation action was cancelled and he was retroactively shown in a pay status during the 1-1/2 month interim period. His claim for relocation expenses from California to Washington did not accrue until the CSC determination was made; therefore, it was not barred by the 6-year time limit on filing claims (31 U.S.C. 71a) when filed in GAO in 1980.
2. Employee's claim for relocation expenses which he would have received but for an improper personnel action may be paid under the Back Pay Act, 5 U.S.C. 5596. Therefore, he may be paid travel expenses of his dependent and transportation of household goods to his new official station. He may also be paid temporary quarters subsistence allowance at the new station which is within the United States, but he is not entitled to a house-hunting trip or expenses of purchase and sale of residences because his old station is not within the United States, its territories or possessions, Puerto Rico, or the Canal Zone.

Mrs. Irene N. Harbin has submitted an appeal of our Claims Group's settlement dated June 24, 1980, which disallowed the claim of her late husband (Ralph C. Harbin) for reimbursement of certain relocation expenses including those of travel, transportation of household goods, and purchase and sale of residences. As will be explained below, the claim for travel expenses and transportation of household goods may be allowed

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in part, but the claim for the expenses of purchase and sale of residences may not be allowed.

Background

During the period November 1971 to August 1973, Mr. Harbin was a civilian employee with the Army Defense Attache Office in Saigon, Vietnam. By travel orders dated August 14, 1973, he was authorized return travel for separation and transportation of not in excess of 5,000 pounds of household goods from Saigon to Downey, California, his place of residence in the United States. His resignation from his position with the Army became effective October 31, 1973. On December 17, 1973, Mr. Harbin reported for duty as an employee of the Department of the Navy, Supervisor of Shipbuilding, in Seattle, Washington. He also moved his dependents and household goods to Seattle, with him, from their home in Downey. However, their home in Downey was not sold until November 14, 1975. Also, a piano was shipped from Los Angeles, California, to their residence in Seattle during November 1975.

In November 1973, Mr. Harbin appealed his October 31, 1973 resignation from his Army position, arguing that he had not expected to resign but to be separated as a retired annuitant, apparently as a result of a reduction in force. Thus, he alleged that his separation was involuntary, and had been accomplished erroneously. Eventually, the Federal Employees Appeals Authority, Civil Service Commission, by decision of November 17, 1978, ruled in his favor in that regard. As a result, by memo dated March 23, 1979, the Chief of Naval Operations informed the Director of the Consolidated Civilian Personnel Office (Naval Support Activity) that Mr. Harbin's 1973 separation from his position with the Army had been cancelled, that "he must be considered as being appointed SUPSHIP [employee of Supervisor of Shipbuilding, Seattle] without a break in service" and that "Mr. Harbin is entitled to reimbursement of expenses incurred in his movement from Viet Nam to Seattle." Accordingly, the Director issued an amendment dated September 9, 1979, to Mr. Harbin's 1973 travel orders, which retroactively authorize reimbursement for travel and relocation expenses. The amendment to his travel authorization contains the following notation:

"Based on the decision of the Federal Employees Appeals Authority, Mr. Harbin's

resignation processed by the Army in 1973 was in error. Therefore, his travel orders for his return to U.S. for separation were inappropriate. These orders are to amend the original orders and move him from Saigon to Seattle, WA vice Saigon to Downey, CA. Based on CNO decision * * * Mr. Harbin's travel entitlement is not to exceed the constructed cost from Saigon to Seattle."

As a result, Mr. Harbin claimed relocation expenses incident to his move in December 1973 from Downey to Seattle, including a house hunting trip in November 1973, the expenses of purchase and sale of residences in 1974 and 1975, transportation of dependents and household goods in 1973, and transportation of a piano in 1975.

The Navy forwarded the claim to our Office for settlement where it was first received on March 21, 1980. In its June 23, 1980 settlement, our Claims Group stated that any expenses incurred prior to March 21, 1974 (6 years prior to receipt of the claim in our Office) are barred by the act of October 9, 1940, ch. 788, 54 Stat. 1061, as amended, 31 U.S.C. 71a (1976). Also, our Claims Group disallowed the real estate expenses on the basis that reimbursement of such expenses is not authorized for a transfer from Vietnam. In the absence of evidence that the piano was owned by Mr. Harbin or one of his dependents prior to December 17, 1973, the claim for its transportation was disallowed.

Mr. Harbin died January 4, 1980, and Mrs. Harbin has pursued the claim since that time.

Essentially, Mrs. Harbin maintains that we should consider payment of those travel and relocation expenses incurred prior to March 21, 1974, because no basis existed upon which to file a claim until December 6, 1978, when the Navy decided to retroactively issue an amendment to the original travel orders.

As is indicated previously, Mr. Harbin submitted an appeal of his separation. In its November 17, 1978 decision, the Federal Employees Appeals Authority, of the Civil Service Commission, in response to his appeal concluded that Mr. Harbin had been misinformed concerning his eligibility to retire

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and since he apparently had no intention to leave his position in Vietnam except for the purpose of retirement, he was involuntarily separated from his position without the benefit of procedures required in 5 C.F.R. Part 753B. Accordingly, the Appeals Authority directed the following:

*** that the action terminating appellant from his position of Supervisory Marketing Specialist, GS-1104-12, effective October 31, 1973, by resignation be canceled. In addition, the official personnel records should be changed to show appellant continuously in a duty and pay status from the date of resignation until the date of his actual return to a duty and pay status when he received a reinstatement career appointment to the position of Contract Price Analyst, GS-1102-11, effective December 17, 1973, with Thirteenth Naval District, Seattle, Washington."

The Appeals Authority had authority to make final decisions on appeals to the Commission, subject to agency petition for reconsideration. See 5 C.F.R. §§ 772.101 and 772.309 (1978). Apparently the agency involved made no such request, and the decision of the Appeals Authority became final. Accordingly, the employee's status became fixed by the record as corrected and he became entitled to travel and relocation expenses due upon application of the authorizing statute to the facts of his case as shown by the corrected records.

The Back Pay Act and the Barring Act

Backpay is authorized under 5 U.S.C. 5596 (1976) for an employee who is found by an "appropriate authority under applicable law, rule, regulation, or collective bargaining agreement," to have been affected by an unjustified or unwarranted personnel action which has resulted in the withdrawal or reduction of all or part of the pay, allowances, or differentials of the employee. Section 5596(b)(1)(A) (Supp. III, 1979) provides in part that such an employee--

"(A) is entitled, on correction of the personnel action, to receive for the period for which the personnel action was in effect--

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"(1) an amount equal to all or part of the pay, allowances, or differentials, as applicable which the employee normally would have earned or received during the period if the personnel action had not occurred * * *"

The regulations prescribed under 5 U.S.C. 5596 to carry out its provisions (in effect when the Appeals Authority issued its decision) provided at 5 C.F.R. § 550.803(d) (1978) that the "appropriate authority" to make the finding that an employee had suffered an unwarranted personnel action included the Civil Service Commission of which the Appeals Authority was a part.

As is indicated above, the Appeals Authority rendered its decision on Mr. Harbin's case in 1978 and, pursuant thereto, the Navy took its corrective action in 1979. We have held that backpay claims accrue at the time the work is performed and the 6-year barring act, 31 U.S.C. 71a, begins to run at that time. However, when a claim is based on another agency's determination of the validity of the claim, we have held that the claim does not accrue, for the purposes of the barring act, until the designated agency makes its determination. See 58 Comp. Gen. 3, 4 (1978).

It is our view that this claim falls into the latter category. That is, while the expenses for which reimbursement is claimed were incurred in 1973, 1974 and 1975 incident to the move to Seattle, any right to reimbursement was not established until 1978 when the Appeals Authority acted. Therefore, since any claim Mr. Harbin had incident to that move must have accrued under the Appeals Authority decision in 1978, and his claim was filed in our Office in 1980, it is not barred by 31 U.S.C. 71a.

As is indicated above, Mr. Harbin's claim arose under the Back Pay Act, 5 U.S.C. 5596. That act, as applicable here, authorizes payment only of the "pay, allowances or differentials" the employee would have received but for the unwarranted personnel action. Apparently, Mr. Harbin was paid the backpay he lost between the time of his involuntary resignation and his reemployment in Seattle since the current

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claim is for travel and transportation expenses and the costs of buying and selling residences.

Entitlement to Travel, Transportation and Relocation Allowances

We have held that the Back Pay Act does not authorize payment of travel, transportation, or moving expenses when they are incidental expenses incurred by an employee as a consequence of the unwarranted personnel action. Such expenses are not allowances that the employee would have received if he had not undergone the improper personnel action. See B-181514, May 9, 1975; B-182282, May 28, 1975; and B-184200, April 13, 1976. However, in this case, as a result of the improper personnel action, Mr. Harbin was denied certain travel and transportation allowances which he would have received but for the improper personnel action. Those allowances may be paid under the Back Pay Act.

Under the revised travel order issued by the Navy to carry out the Appeals Authority's decision, Mr. Harbin was transferred from Vietnam to Seattle, Washington, in lieu of Vietnam to Downey, California. His travel and transportation entitlements must be determined based on the revised travel order and the applicable statutes and regulations. Travel and transportation entitlements of civilian employees of Department of Defense agencies are set out in Volume 2, Joint Travel Regulations (2 JTR), which effectuates the Federal Travel Regulations for such employees.

When Mr. Harbin was transferred to Vietnam, he was not authorized to bring his dependents with him and he was authorized transportation of not in excess of 5,000 pounds of household goods. Apparently his dependents remained at his actual place of residence in California during his overseas assignment. The record does not show the weight of the household goods he took overseas or returned to California at Government expense.

Under the revised travel order, incident to his employment in Seattle, he was entitled to travel and transportation allowances for himself and his household goods directly from Vietnam to Seattle, less what he already received in allowances for travel and transportation from Vietnam to

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California. He is also entitled to the transportation of his dependents at Government expense from his residence in Downey, California, to Seattle, not to exceed the constructive cost of such travel from Vietnam to Seattle. 2 JTR paragraph C7003-3a. Claim is made for such travel for his wife and daughter as his dependents. His wife qualifies as a dependent and the claim for her travel may be allowed. However, his daughter was 24 years old when the travel was performed in 1973. To qualify as a dependent child, the daughter would have had to have been under 21 years of age or physically or mentally incapable of self-support. 2 JTR Appendix D, Dependent. Since those conditions have not been shown to exist, reimbursement for the daughter's travel may not be allowed.

As to transportation of household goods, Mr. Harbin was entitled to the return of not in excess of 5,000 pounds of his goods from Vietnam to his new official duty station in Seattle. He is also entitled to the transportation of his goods from California to Seattle to the extent that the combined weight of the shipments does not exceed his maximum entitlement of 11,000 pounds. 2 JTR paragraphs C8000 and C8003-6.

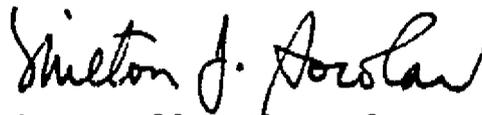
Claims have been submitted for the transportation of 4,290 pounds of household goods from California to Seattle. This amount consists of 1,670 pounds which Mr. Harbin moved himself, 2,080 pounds moved by household goods carrier, and a piano weighing 540 pounds shipped separately from storage by household goods carrier. While previously it was unclear as to whether the piano was owned by Mr. Harbin or his dependents prior to December 1973, Mrs. Harbin has now furnished information satisfactorily establishing that it was owned by them prior to that time. Since the claim for shipment of the 4,290 pounds of household goods would be within the total allowable weight even if the full shipment from overseas had been made it may be allowed.

Claim is also made for travel allowances for Mr. Harbin and his wife to travel from Downey to Seattle on a house-hunting trip prior to their move there, temporary quarters subsistence expenses while occupying temporary quarters following their move to Seattle, and the expenses of purchase

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and sale of residences incident to that move. Under the authorizing statute, the expenses of a house-hunting trip may be paid only when both the old and the new official stations are located within the United States, and the expenses of purchase and sale of residences may be paid only when both the old and the new stations are within the United States, its territories and possessions. See 5 U.S.C. § 5724a(a)(2) and (4); 54 Comp. Gen. 1006 (1975) and 47 Comp. Gen. 93 (1967). Since Mr. Harbin's old official station was in Vietnam, he did not qualify for these allowances upon the move to his new official station in Seattle and, thus, the claim for these allowances may not be paid. However, since the new station was located within the United States, temporary quarters subsistence expense may be paid. See 5 U.S.C. § 5724a(a)(3) and 58 Comp. Gen. 606, 608-609 (1979). Accordingly, this allowance may be paid for the 10-day period for which it is claimed.

A settlement will be issued on this basis in due course.

for 
Comptroller General
of the United States