

DECISION

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

FILE: B-206447

DATE: July 27, 1982

MATTER OF: William J. Schuhl - Household goods shipping expenses - New appointee - Erroneous advice

DIGEST:

A new appointee to a Government position was advised in a confirmation of appointment letter that the movement of his household goods had been authorized. However, travel and transportation expenses for a new appointee to the Federal service are not authorized by law and the Federal Travel Regulations unless the person is appointed to a manpower-shortage position. The fact that agency officials erroneously authorized reimbursement of expenses for an appointee to a position which was not designated a manpower-shortage position provides no basis for payment since a payment not authorized by statute or regulation will not form the basis for estoppel against the Government.

The issue in this case is whether a new employee may be reimbursed for the cost of shipping his household goods to his first permanent duty station. Although he was erroneously advised by Government officials concerning his entitlements, there is no legal basis upon which the claim may be paid.

Mr. William J. Schuhl, an employee of the Department of Commerce, has requested reconsideration of our Claims Group's determination of August 27, 1981, that he was not entitled to reimbursement of the costs incurred in moving his household goods from San Antonio, Texas, to the Washington, D.C., area incident to accepting Government employment with the Department of Commerce.

BACKGROUND

Mr. Schuhl received a letter of acceptance dated October 24, 1980, confirming his appointment as a communications Specialist, GS-0223-11, in the Office of Administrative Services, Department of Commerce, effective November 2, 1980.

The letter specifically advised him that movement of his household goods had been authorized. The confirmation letter was prepared and properly signed by a personnel management specialist in accordance with prescribed procedures of the Department. At that time, Mr. Schuhl lived in San Antonio, Texas, and was not a Government employee.

Mr. Schuhl reported for duty in Washington, D.C., on November 3, 1980, as scheduled, and moved his household goods at personal expense. On December 22, 1980, Mr. Schuhl requested in writing that the Chief, Communications and Transportation Division, Office of Administrative Services, issue confirming orders for movement of household goods at Government expense in order that he might submit a voucher for reimbursement. A set of confirming orders was prepared but disapproved by the Accounting Division on the basis that such reimbursement was in violation of Federal Travel Regulations since Mr. Schuhl was a new employee of the Federal Government and not entitled to reimbursement. Mr. Schuhl was formally advised of this determination on February 3, 1981, which gave rise to this claim in the amount of \$3,285.66 for the transportation of household goods.

Section 5723 of title 5, United States Code, and Chapter 2 of the Federal Travel Regulations, FPMR 101-7 (May 1973), authorize reimbursement of travel and transportation expenses of new appointees appointed to manpower-shortage positions, whereas new appointees generally are not entitled to reimbursement. As our Claims Group concluded in its adjudication of August 27, 1981:

"Paragraph 2-1.5e(1) of the Federal Travel Regulations provides that the costs which a new appointee incurs for travel and moving a residence to a first duty station may not be paid by the Government unless a new employee is appointed to a manpower shortage category position or a position located outside the conterminous United States. Since you were not appointed to a manpower shortage category position, we may not allow payment of any relocation expenses."

Mr. Schuhl stressed that because the October 24, 1980, letter included an authorization for the movement of his

household goods, the Commerce Department should be bound by that authorization. Our Claims Group disposed of this contention by stating as follows:

"* * * this Office has long held that the United States is not liable for the erroneous or negligent acts of its officers and employees, even though committed in the performance of their official duties. Posey v. United States, 449 F. 2d 228, 234 (1971). All Government agents and employees are special agents of limited authority and all persons dealing with such agents are charged with notice of that fact and of the limitations upon the authority of the agents with whom they deal. United States v. Thompson, 293 F. Supp. 1307 (1967), affirmed 408 F. 2d. 1075 (1969). Since this Office may settle claims only on a legal basis and may not waive or modify laws in individual cases, your claim may not be allowed."

RECONSIDERATION

In appealing the determination of our Claims Group, Mr. Schuhl in essence contends that the doctrine of equitable estoppel applies against the Government in his case. Asserting that he accepted the Government's offer of employment partially because of the promise by the agency to pay for his household goods shipment from Texas to the Washington area, Mr. Schuhl contends as follows:

"I feel that it is only right for the government to live up to its promise since I have lived up to my side of the agreement. Further, I believe that the cases cited by SAC relative to the Government's responsibility for errors of its employees only applies in business transactions not, as they imply, to personnel actions."

Mr. Schuhl is mistaken. The application of the doctrine of equitable estoppel with regard to overpayments to Government employees was discussed at length in William J. Elder and Stephen M. Owen, 56 Comp. Gen. 85 (1976). In

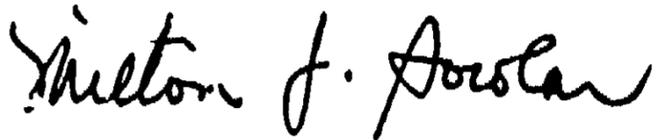
holding that the doctrine of equitable estoppel does not apply we stated at page 88:

"* * * the relationship between the Federal Government and its employees is not a simple contractual relationship. Since Federal employees are appointed and serve only in accordance with the applicable statutes and regulations, the ordinary principles of contract law do not apply."

Thus, it was concluded that equitable estoppel does not bar recovery by the Government from its employees in cases where statutes and regulations control the entitlements regardless of the erroneous actions of its agents. Accordingly, it is our view that the Government is not estopped from repudiating the erroneous advice of its officers or agents in agreeing to do that which the law does not sanction or permit. See Utah Power & Light Co. v. United States, 243 U.S. 389, 409 (1917). And see our decision Catherine Evans, B-202628, December 30, 1981.

We recognize that Mr. Schuhl may have relied on the misinformation and erroneous authorization given to him concerning his entitlement to reimbursement although we do note that he was orally advised before he shipped his household goods that the Department could not pay for the movement. However, as indicated above, the agency's erroneous actions may not serve as the basis for establishing a valid reimbursement entitlement, since the Government is not legally bound by the mistakes, and no authority exists which would otherwise permit payment of the household goods shipping expenses claimed by Mr. Schuhl.

Accordingly, the Claims Group's disallowance is sustained.

for 
Comptroller General
of the United States