

DECISION



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

FILE: B-201860

DATE: August 27, 1982

MATTER OF: Bruce E. Stewart - Relocation expenses - merit promotion transfer

- DIGEST:**
1. Employee was denied relocation expenses incident to transfer from San Diego, California, to Cheyenne, Wyoming, on the basis of agency anticipation of many local qualified applicants and shortage of funds at the Cheyenne facility. Although vacancy announcement was not explicitly placed under agency's merit promotion program, applicable Office of Personnel Management and agency regulations required that it should have been so included. Absent agency regulation or provision in vacancy announcement to the contrary, merit promotion transfers are considered to be in the Government's interest, and relocation expenses are payable under 5 U.S.C. §§ 5724 and 5724a. Budget constraints do not justify denial of reimbursement of relocation expenses when transfer is in interest of Government. Employee is entitled to relocation expenses.
 2. Employee claims relocation expenses incident to transfer from California to Wyoming pursuant to selection under vacancy announcement for position with higher promotion potential. He was notified, after selection, but prior to transfer, that relocation expenses would not be paid. Where agency regulations require such assignments to be made under merit promotion program, we find his transfer was in Government's interest and he is entitled to relocation expenses notwithstanding his earlier acceptance of no reimbursement by agency.

Mr. Conrad R. Hoffman, Assistant Deputy Administrator for Budget and Finance, Veterans Administration (VA), requests an advance decision regarding whether Mr. Bruce E. Stewart is entitled to reimbursement of relocation expenses incident to his transfer from California to Wyoming. For the reasons stated herein, we hold that Mr. Stewart is entitled to be reimbursed for his relocation expenses.

Mr. Stewart, an employee of the VA Regional Office, San Diego, California, applied for the position of Supervisory Veterans Claims Examiner, GS-996-11 (Chief, Claims Unit), with the VA Center in Cheyenne, Wyoming. The position vacancy was announced throughout the Western Region of VA by a vacancy announcement dated February 3, 1978, which contained the notation:

"NOTE: This is a target position GS-12. The individual selected will be eligible for promotion after one year without further competition. Promotion to the target position (GS-12) will depend on the progress and performance of the selected individual."

Mr. Stewart was competitively selected for the position, and on March 6, 1978, he signed an Intra-Agency Transfer Request, which had been prepared by the receiving station and which clearly showed that travel and transportation at Government expense were not authorized. This was a lateral transfer for Mr. Stewart with a potential for a noncompetitive promotion of one grade at a later date as indicated by the above quotation from the vacancy announcement. Mr. Stewart reported to the new duty station on March 23, 1978. No travel orders were issued to him.

The vacancy announcement to which Mr. Stewart responded was not expressly stated to be under the VA's merit promotion program. However, the then controlling provisions of the Federal Personnel Manual, Chapter 335, Promotion and Internal Placement (December 31, 1973), specifically Subchapter 2, Merit Promotion Requirements, requirement 1(a)(1), required such vacancies to be placed under the merit promotion program. Moreover, VA Personnel Manual MP-5, Part I, Chapter 335, Promotion and Internal Placement, provided in section A, paragraph 3c, as follows:

"c. Promotion. A promotion or assignment to a position with known promotion potential must be made under the procedures contained in section B [Merit Promotion Program] of this chapter."

We specifically requested information from the VA about what exception to their merit promotion program, if any, applied to this vacancy announcement. When requesting that information, we advised the VA that if Mr. Stewart's reassignment was not covered by a specific exception to the merit promotion program, we would proceed on the assumption that it was part of the VA merit promotion program. In its response, the VA provided no information to show that Mr. Stewart's selection to the position in question was not under merit promotion. The VA did point out that their regulations at that time did not provide for automatic payment of relocation expenses in the case of a merit promotion. On the basis of the record before us, we will treat Mr. Stewart's reassignment as if it had been under the VA's merit promotion program.

The VA states that the employee did not seek reimbursement for any cost associated with the relocation until he filed claims totaling \$7,814.43 on October 8, 1980. The authorizing official at the VA Center in Cheyenne stated that it was not the agency's intent to reimburse relocation expenses because of the feeling that there would be many local qualified applicants, 1/ and because the facility lacked the necessary funds. It is the agency's position that the transfer could justifiably be considered primarily for the benefit of the employee, and that the employee evidenced his acceptance of the arrangement by signing the Intra-Agency Transfer Request referred to above, which showed that no relocation expenses would be paid. The VA is also concerned over the possibility of budgetary trouble if it is forced to pay relocation expense claims to employees who, at the time they were offered new

1/ We note, however, that the area of consideration was not limited to the locality of the position and that none of the six highest ranked candidates was from the Cheyenne area.

positions, accepted the condition of no reimbursement of relocation expenses.

Under paragraph 2-1.3 of the Federal Travel Regulations, FPMR 101-7 (May 1973) (FTR), reimbursement of travel and relocation expenses upon an employee's change of station under 5 U.S.C. §§ 5724 and 5724a (1976), is conditioned upon a determination by the head of the agency concerned or his designee 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. See Michael J. DeAngelis, B-192105, May 16, 1979; Paul J. Walski, B-190487, February 23, 1979. The VA's Personnel Manual, MP-1, Part II, Chapter 2, Employee Travel Management, paragraph 13c(2), provides as follows:

"c. Determination of Whether Travel
May be at Government Expense

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"(2) To authorize payment of traveling expenses, applicable allowances, and the transportation costs of household goods, there must be a positive administrative determination by the station requesting the transfer that the move is made for the benefit of the Government."

Neither the regulations nor the statute, however, furnish any guidance as to the factors to be considered in making the determination of whether a transfer is for the benefit of the Government. In Dante P. Fontanella, B-184251, July 30, 1975, we stated that:

"Generally, however, 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,

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. 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."

See Rosemary Lacey, B-185077, May 27, 1976, where the same guidance is set forth.

We have allowed relocation expenses on merit promotion transfers where an agency's own regulations provided that such transfers are in the Government's interest. Our holding in Stephen P. Szarka, B-188048, November 30, 1977, involved an Air Force employee who was selected for a position in California that had been advertised by an agency-wide vacancy announcement under the merit promotion program. When the selection was made, the employee was informed that he would have to pay his own expenses of transferring from Florida. We overruled the agency's determination that the transfer was for the employee's benefit because the Air Force, by regulation, had determined that transfers under the merit promotion program were in the interest of the Government.

We further addressed the matter of merit promotion transfers in Eugene R. Platt, 59 Comp. Gen. 699 (1980), and Reconsideration of Platt, B-198761, December 23, 1981, 61 Comp. Gen. _____ (1981). In the first Platt decision we stated:

"It is evident that the wide dissemination of vacancy announcements is a means of attracting qualified eligibles for vacant positions. The primary purpose of the merit promotion program is 'to ensure systematic means for selection for promotion according to merit.' 5 C.F.R. § 335.103 (1979). Through open competition eligible persons are given the opportunity to compete for vacancies, and agencies are able to reach a wider pool of applicants, and refer the best qualified candidates to a selecting official. The fact that employees have to apply for such vacancies, or that the promotion may be, and usually is, also in the employee's best interest, does not change the

fundamental truth that the purpose and intent of merit promotion is to serve the Government's interest by obtaining the best qualified persons for vacant positions."

One of the VA's reasons for denying reimbursement in this particular case was the lack of funds. However, in our decision David C. Goodyear, 56 Comp. Gen. 709 (1977), we held that budget constraints cannot form the basis for denying an employee relocation expenses if his transfer has been found to be in the Government's interest. Further, as set forth above in Fontanella, if the agency recruits or requests an employee to transfer to a different location we will normally regard such transfer as being in the interest of the Government. While we noted in Reconsideration of Platt, above, that an agency is not precluded from limiting relocation benefits in merit promotion transfers by regulation, our view, as stated in Platt, and Reconsideration of Platt, is that, absent an agency regulation to the contrary, when an agency issues an announcement of an opening under its merit promotion program the action is a recruitment action within the scope of Fontanella, and employees who relocate pursuant thereto are considered to be transferred in the interest of the Government.

We are not aware of any VA regulations governing merit promotions that contain any limitations on reimbursement of relocation expenses of employees selected under the VA merit promotion program, nor are we aware of any VA policy that would require it to treat merit promotion transfers as having been accomplished for the convenience of the employee. As indicated above, since we are treating Mr. Stewart's transfer as if it had been made pursuant to the VA's merit promotion program, we conclude that his transfer was in the interest of the Government.

We have also been asked by the VA to specifically consider the legality of making payments to an employee who accepts a transfer at no cost to the Government as shown by the employee's signature on the transfer request which shows that relocation expenses are not to be paid. We do not believe that an employee is necessarily barred from reimbursement under those circumstances. The reimbursement of an employee for relocation expenses incurred incident to a transfer in the interest of the Government is a right pursuant to law and regulations.

Thus, the fact that an employee may evidence his acquiescence in the agency's determination that he forgo reimbursement of transfer expenses does not preclude reimbursement if the transfer is found to be in the interest of the Government. Thus, in Reconsideration of Platt, where the Commission on Civil Rights made the same argument, we held that, even though Platt had accepted the job offer with knowledge of the Commission's decision not to pay expenses, he was not barred from claiming relocation expenses to which he was legally entitled. By the same token, Mr. Stewart is not barred from claiming relocation expenses and, since we have found he was transferred in the interest of the Government, he may be paid his expenses. See James F. Hansard, B-201732, June 30, 1981, and Rose Inouye, B-194196, November 14, 1979.

Accordingly, Mr. Stewart is entitled to reimbursement of the relocation expenses authorized under 5 U.S.C. §§ 5724 and 5724a.



Acting Comptroller General
of the United States