

**DECISION**

25384

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

**FILE:** B-196292

**DATE:** June 6, 1983

**MATTER OF:** Greg T. Montgomery

**DIGEST:**

Where the record does not establish that prior to an employee's reporting to his duty station there was a clear intent by the agency that relocation expenses were to be paid and that the change of duty station was to be accomplished without a break in service, there is no basis to authorize a retroactive adjustment of the employee's separation date to avoid a break in service to permit the payment of travel and relocation expenses. Accordingly, we uphold decision B-196292, dated July 22, 1980, which disallowed payment to the employee of travel and relocation expenses because of a break in service prior to his reporting to the new duty station.

This decision is in response to a request for an advance decision from Mr. John R. Nienaber, an authorized certifying officer of the Department of Agriculture, as to whether an employee of the United States Forest Service is entitled to reimbursement of travel and relocation expenses in connection with his relocation to a new official duty station subsequent to his resignation from his position at his former official duty station.

In decision Matter of Montgomery, B-196292, July 22, 1980, this Office held that Mr. Montgomery was not entitled to reimbursement for travel and relocation expenses due to a break in Government service prior to his reporting to his new duty station. We are now asked whether Mr. Montgomery's claim may now be allowed in view of our decision in Matter of Akers, B-197771, August 11, 1981, where we allowed the agency in which the individual had been employed to retroactively adjust the employee's separation date to avoid a break in service so that he could be allowed reimbursement of travel and relocation expenses in connection with a transfer to another agency. For the reasons set forth below the instant case is distinguishable from that in Akers and accordingly, we uphold the decision of July 22, 1980, which disallowed Mr. Montgomery's claim.

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The record shows that Mr. Montgomery held a temporary appointment as a GS-5 Forest Technician with the Forest Service Intermountain Forest and Range Experiment Station in Logan, Utah. In July of 1978 he was offered a position as a Supervisory Forest Technician GS-6 at the Payette National Forest (National Forest) in New Meadow, Idaho. Mr. Montgomery accepted the offer of employment and was to report for duty there by July 16, 1978. Mr. Montgomery states that when he inquired about relocation procedures he was advised by Forest Service officials in Utah that as a temporary employee he was not entitled to relocation expenses and that he would have to resign from his position in Logan, Utah, and be present and working at the new duty station on the effective date of the transfer. The record shows that based on this advice Mr. Montgomery resigned from his position with the Forest Service at Logan, Utah, effective July 7, 1978. He advises that he resigned one week before the date he was to report for duty at the National Forest so that he would have time to travel there and find a place to live prior to reporting for duty on July 16, 1978. The agency has not disputed in any way Mr. Montgomery's account of the facts and by letter dated December 9, 1982, the Forest Service confirmed that he had been required by officials at his former duty station to resign his position prior to reporting for duty at the National Forest.

The advice provided by agency officials at the old duty station, Logan, Utah, was erroneous since the fact that an employee may have been serving under a temporary appointment would not, by itself, affect an employee's entitlement to reimbursement of travel and relocation expenses. See B-171495, March 4, 1971, and B-164051, July 10, 1968.

By letter dated March 7, 1979, Mr. Montgomery brought the circumstances of his resignation based on the erroneous advice of agency officials at Logan, Utah, to the attention of the appropriate officials at the National Forest. On April 4, 1979, the Administrative Officer of the National Forest issued Mr. Montgomery a travel authorization for expenses he incurred in his relocation to New Meadow, Idaho. The travel authorization contained the following notice:

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"Authorization is post approved. Due to administrative error, employee was not advised he was eligible for reimbursement of transfer of station expenses so form 6500-140 was not prepared. Transfer of Station Travel Authorization would have been approved prior to travel had 6500-140 been submitted."

Based on this authorization Mr. Montgomery claimed reimbursement in the total amount of \$1,248.95 for travel and relocation expenses he incurred.

In the decision of July 22, 1980, Mr. Montgomery's claim was disallowed on the basis of the longstanding rule that reimbursement for the expenses of a transfer under 5 U.S.C. §§ 5724 and 5724a requires that the change in the permanent duty station of an employee be accomplished without a break in service. 34 Comp. Gen. 204 (1954); 54 Comp. Gen 747 (1975) and Matter of Boulton. B-192817, December 18, 1978.

In Matter of Akers, B-197771, August 11, 1981, this Office allowed the retroactive adjustment of an employee's separation date in order to avoid a break in service and thus, permit payment of relocation expenses. As stated above, we have been asked to reconsider the prior disallowance of Mr. Montgomery's claim on the basis of the result in the Akers case.

Briefly restated, the facts in Akers involved an employee who had been employed by the Department of Housing and Urban Development in Washington, D.C., and who accepted an offer of employment as a law clerk with the United States Bankruptcy Court in San Diego, California. In a letter to the employee the Administrative Office of the United States Courts stated that the Bankruptcy Judge concerned had advised that the transfer was to be without a break in service and was in the best interest of the Government for the purpose of authorizing relocation expenses. However, several weeks before his scheduled transfer the employee resigned his position at the Department of Housing and Urban Development since he stated that he did not have leave available and needed time to drive to the new duty station to locate a residence. Under the circumstances, this Office allowed the retroactive adjustment of the employee's records

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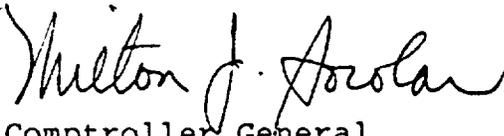
to show that he was separated from his prior employment on the day before his employment with the Bankruptcy Court. This action was permitted in view of prior cases where this Office has approved retroactive adjustment of an employee's records where it is known prior to an employee's resignation that he is resigning in order to accept an appointment to another position with 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. See Matter of Dahlgren, B-191014, March 10, 1978, and Matter of Ortiz-Deliz, B-184216, January 2, 1976, and decisions cited therein.

As stated in Akers the record in that case clearly showed that it was the intent of the gaining agency that the employee be reimbursed for relocation expenses. This intent was evidenced by a letter to the employee from the Administrative Office of the United States Courts dated prior to his resignation which expressly authorized travel and relocation expenses from Washington, D.C., to San Diego and reflected the intent that the transfer be accomplished without a break in service. We also stated therein that there was clearly no intent on the part of any of the parties concerned to deprive him of his entitlement to relocation expenses. Accordingly, based on prior decisions of this Office we allowed the retroactive adjustment of the employee's separation date to avoid a break in service on the basis of the clear intent that he would be transferred without a break in service and be entitled to relocation expenses.

In contrast to Akers, in Mr. Montgomery's case there was an intent by officials at his former duty station, albeit based on an erroneous understanding of his entitlement to relocation expenses, that Mr. Montgomery resign his position prior to reporting to his new duty station. Furthermore, there is nothing in the record which shows that prior to or contemporaneous with Mr. Montgomery's relocation to the National Forest the agency officials at the new duty station intended that he be authorized travel and relocation expenses and that his move would be accomplished without a break in service. It was not until after Mr. Montgomery had brought the matter of his entitlement to relocation expenses to the attention of agency officials at the National Forest that he was

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authorized payment of travel and relocation expenses. This occurred more than nine months after his reporting date. In the absence of a clear intent by the Forest Service prior to or at the time of Mr. Montgomery's relocation that his transfer was to be accomplished without a break in service and that he be authorized travel and relocation expenses, we see no basis to allow the retroactive adjustment of his separation date to avoid the break in service. Accordingly, we uphold the decision of July 22, 1980, which held that Mr. Montgomery was not entitled to the payment of travel and relocation expenses because of the break in service prior to his reporting to his new duty station at the National Forest.

*for*   
Comptroller General  
of the United States