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

FILE: B-210657 **DATE:** November 15, 1983

MATTER OF: Edgar T. Callahan - Payment of Relocation Expenses

DIGEST:

1. The Chairman of the National Credit Union Administration was reimbursed for relocation expenses he incurred following his appointment to that position. The general rule is that an employee must bear the expenses of travel to his first duty station in the absence of a statute to the contrary. Since 5 U.S.C. § 5722 and 5723, as implemented by the Federal Travel Regulations, authorize relocation allowances only for those new appointees who are assigned overseas or are serving in Senior Executive Service or manpower shortage positions, the Chairman of the NCUA was not entitled to reimbursement for relocation expenses.

2. The National Credit Union Administration (NCUA) is an independent agency within the executive branch of the Government. Hence, NCUA is an "Executive agency" within the meaning of 5 U.S.C. § 5721(1) (1976), and the entitlement of its employees to relocation expenses is governed by 5 U.S.C. Chapter 57, subchapter II. Furthermore, fees which are collected from Federal credit unions and deposited into a revolving fund for administrative and supervisory expenses of NCUA are appropriated funds which are subject to statutory restrictions on the use of such funds.

3. The Chairman of the NCUA was reimbursed for relocation expenses following his appointment to that position. The NCUA paid these expenses but was

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later reimbursed by the NCUA's Central Liquidity Facility (CLF), a Government-controlled corporation not subject to the relocation statutes contained in 5 U.S.C. Chapter 57, Subchapter II. However, since the Chairman of NCUA is not an employee of the CLF, these relocation expenses may not be paid by the CLF.

The issue in this case is whether the Chairman of the National Credit Union Administration Board (NCUA) is entitled to be reimbursed for the travel and relocation expenses he incurred in reporting to his first duty station. We hold that since the NCUA is an appropriated fund activity and is subject to the provisions of 5 U.S.C. Chapter 57, Subchapter II, the Chairman may not be paid relocation expenses in the absence of specific statutory authorization. Furthermore, we hold that such expenses may not be paid by the NCUA's Central Liquidity Facility, a Government-controlled corporation not subject to the provisions of 5 U.S.C. Chapter 57, Subchapter II.

The Accounting and Financial Management Division of our Office has questioned the entitlement of the Honorable Edgar T. Callahan to be reimbursed for the relocation expenses he incurred in anticipation of his appointment to the position of Chairman, National Credit Union Administration Board. The information upon which this inquiry is based is presented below.

BACKGROUND

The National Credit Union Administration (NCUA) was established in 1970 pursuant to Public Law 91-206, 84 Stat. 49, March 10, 1970, 12 U.S.C. § 1752a, as an "independent agency" within the executive branch of the Government. The basic responsibility of NCUA is to administer the provisions of the Federal Credit Union Act, as amended, 12 U.S.C. §§ 1751-1795 (1982). Initially, NCUA was headed by a single Administrator, but pursuant to Public Law 95-630, 92 Stat. 3680, November 10, 1978, the responsiblity and authority

for managing NCUA was transferred to a three-member Board. Members of the NCUA Board are appointed by the President, by and with the advice and consent of the Senate. 12 U.S.C. § 1752a (1982). The Chairman's position is at Level III of the Executive Schedule. See 5 U.S.C. § 5314 (1982).

In 1981, Mr. Callahan, who was not then a Federal employee, was appointed to the position of Chairman, NCUA Board. In anticipation of his confirmation, he moved from Springfield, Illinois, to Washington, D.C., during the months of October, November, and December 1981. On October 23, 1981, NCUA's Board voted to approve payment of relocation expenses incurred by Mr. Callahan and his family on the basis that such payment was not specifically precluded by Chapter 57 of title 5, United States Code, or the Federal Travel Regulations, FPMR 101-7, and that it was within the scope of section 120(i)(2) of the Federal Credit Union Act, 12 U.S.C. § 1766(i)(2). Consequently, NCUA paid Mr. Callahan $21,250.37 to reimburse him for the subsistence expenses, costs of shipping household goods, and real estate expenses he incurred in moving to Washington, D.C.

We informed Mr. Callahan by letter dated July 15, 1983, that it appeared he was not entitled to be reimbursed for the relocation expenses he incurred in connection with his appointment. More specifically, we advised him that, as a general rule, an employee must bear the expenses of travel to his first permanent duty station in the absence of a specific statute to the contrary. 58 Comp. Gen. 744, 746 (1979); 53 Comp. Gen. 313, 315 (1973). Statutory exceptions to the general rule are provided in 5 U.S.C. § 5722, which authorizes travel and transportation expenses incurred by new appointees assigned overseas, and section 5723, which provides for reimbursement of certain relocation expenses incurred by new appointees serving in Senior Executive Service (SES) and manpower shortage positions. We stated that, in line with the long-standing principle of statutory construction that the enumeration of certain persons or classes of persons in a statute implies the exclusion of others, the statutory authorization in sections 5722 and 5723 for payment of relocation allowances to new appointees must be construed as being limited to those categories of appointees specifically mentioned in the statutes.

We stated in our letter that since Mr. Callahan was not assigned overseas or appointed to an SES or manpower shortage position, it appeared that NCUA had no authority to reimburse him for the travel and transportation expenses he incurred in reporting to his first duty station. However, before reaching any conclusions as to Mr. Callahan's indebtedness for relocation expenses, we offered him an opportunity to respond to the factual and legal matters involved.

DISCUSSION

The General Counsel of NCUA, responding on behalf of Mr. Callahan, contends that moving expenses were properly paid to Mr. Callahan since he is not subject to the relocation expense provisions of 5 U.S.C. Chapter 57, Subchapter II. More specifically, the General Counsel states that sections 5722 and 5723, discussed above, address the relocation expense entitlement of only those new appointees who are employed by appropriated fund activities, since those statutes expressly provide that "an agency may pay from its appropriations" the relocation expenses of the specified appointees. The General Counsel of NCUA maintains that NCUA is not an appropriated fund activity since, under 12 U.S.C. § 1755 (1982), NCUA is self-supporting, deriving its income from annual operating fees collected from Federal credit unions. In this regard, he cites our decision in 50 Comp. Gen. 545 (1971), as well as portions of the legislative history of the Federal Credit Union Act, 12 U.S.C. §§ 1751-1795, evidencing Congressional intent to establish NCUA as a financially independent agency, operating without cost to the Federal Government.

The General Counsel of NCUA argues that, since NCUA is not an appropriated fund activity subject to restrictions contained in 5 U.S.C. Chapter 57, Subchapter II, it has independent authority under section 120(i)(2) of the Federal Credit Union Act, 12 U.S.C. § 1766(i)(2), to reimburse Mr. Callahan for the expenses he incurred in reporting to his first duty station. The relevant part of 12 U.S.C. § 1766(i)(2) authorizes NCUA to "* * * expend such funds [and] * * * make such payments in advance or by way of reimbursement * * * as it may deem necessary or appropriate to carry out the provisions of this chapter; * * *."

We find that, contrary to NCUA's assertion, Mr. Callahan's entitlement to relocation expenses is governed by the provisions of 5 U.S.C. Chapter 57, Subchapter II, as implemented by Chapter 2 of the Federal Travel Regulations, FPMR 101-7 (September 1981) (FTR). As noted previously, NCUA was established as an independent agency within the executive branch of the Government and, as such, its employees may be regarded as "individuals employed in or under an agency" within the meaning of 5 U.S.C. § 5721(2). Specifically, the term "agency" is defined in section 5721(1) to include an "Executive agency"; sections 104 and 105 of Title 5, U.S.C. (1976), read together, incorporate within the term "Executive agency" an independent establishment within the executive branch of the Government. Therefore, NCUA is an "Executive agency" for the purposes of 5 U.S.C. § 5721(1).

Also, the General Counsel of NCUA concedes that NCUA employees are subject to the provisions of 5 U.S.C. §§ 5701-5709 governing the payment of travel and subsistence expenses. We note that the language of section 5701 is very similar to the language of section 5721, particularly with respect to the definition of the term "agency."

Moreover, it is clear that NCUA may be regarded as an appropriated fund activity, subject to restrictions on the use of appropriated monies. Section 1755 of Title 12, United States Code, authorizes the collection of annual operating fees from Federal credit unions, providing for the disposition of those fees as follows:

> "(d) Payment into Treasury of United States
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> All operating fees shall be deposited with the Treasurer of the United States for the account of the Administration and may be expended by the Board to defray the expenses incurred in carrying out the provisions of this chapter including the examination and supervision of Federal credit unions."

The provision quoted above is substantially similar to that formerly contained in section 5 of the Federal

Credit Union Act, Ch. 750, 48 Stat. 1216, 1217, June 26, 1934, as amended. Under the former provisions of section 5, the Bureau of Federal Credit Unions, the predecessor to NCUA, operated exclusively from income derived from charter, examination, and supervision fees which were collected from Federal credit unions and deposited into the Treasury for the account of the Bureau. After analyzing section 5 of the Federal Credit Union Act, we stated in 35 Comp. Gen. 615 (1956) that the fees collected by the Bureau represented monies received for the use of the United States. We recognized that the statutory authorization in section 5 for crediting the fees to a special fund and the making of such fund available to defray administrative and supervisory costs incurred by the Bureau constituted a continuing appropriation of funds from the Treasury without further action by Congress. Nevertheless, we specifically held that such funds represent appropriated funds which, in the absence of specific statutory authorization to the contrary, would be subject to the various restrictions and limitations on the use of appropriated monies. 35 Comp. Gen. 615, 617. See also 60 Comp. Gen. 323 (1981) and decisions cited therein.

The General Counsel of NCUA cites our decision in 50 Comp. Gen. 545 (1971) for the proposition that NCUA is not an appropriated fund activity. However, in that decision we referred to 35 Comp. Gen. 615 and distinguished it only for the purposes of the miscellaneous receipts rule regarding the disposition of monies received for lost or damaged goods.

For the reasons stated in 35 Comp. Gen. 615, we believe that the operating monies made available to NCUA under the current provisions of 12 U.S.C. § 1755 constitute appropriated funds and are subject to statutory restrictions on the use of such funds. Accordingly, NCUA's authority under 12 U.S.C. § 1766 to expend its operating funds "as may be necessary and appropriate" to carry out the provisions of the Federal Credit Union Act must be exercised in accordance with the provisions of 5 U.S.C. Chapter 57, Subchapter II, as implemented by the FTR and interpreted by decisions of this Office.

The General Counsel of NCUA contends that, even if NCUA's authority to reimburse Mr. Callahan for relocation

expenses is circumscribed by the provisions of 5 U.S.C. Chapter 57, Subchapter II, sections 5722 and 5723 should not be construed as exclusively defining the situations in which an individual may be reimbursed for expenses incurred in reporting to his first duty station. In support of this contention, he argues that, had Congress intended to generally proscribe payment of relocation allowances to new appointees, language to that effect would have been included in sections 5722 and 5723, or in a separate section of 5 U.S.C. Chapter 57, Subchapter II. Further, the General Counsel of NCUA maintains that our interpretation of sections 5722 and 5723 as impliedly prohibiting the payment of relocation expenses to categories of new appointees not specifically mentioned therein rests on a principle of statutory construction which is subject to question. Finally, he suggests that the sole purpose of sections 5722 and 5723, read in their entirety, is to condition the payment of relocation expenses to the specified new appointees on the completion of required periods of service.

As indicated previously, this Office has long held that an employee must bear the expenses of travel to his first permanent duty station in the absence of statutory authorization to the contrary. The General Counsel of NCUA does not contend that there is statutory authorization for the payment of relocation allowances to presidential appointees. In fact, he does not dispute our conclusion that the only statutory authorization for payment of relocation expenses to new appointees is found in 5 U.S.C. §§ 5722 and 5723, which provide that new appointees who are assigned overseas or are serving in SES or manpower shortage positions may be reimbursed the travel and transportation expenses they incur in reporting to their first duty stations. While the General Counsel of NCUA argues that, for various reasons, sections 5722 and 5723 cannot be construed as exclusively defining the situations in which new appointees may be paid relocation allowances, FTR para. 2-1.5e(1)(b), implementing those statutes, prohibits the allowance of relocation expenses to new employees who are not assigned overseas or appointed to SES or manpower shortage positions. As a regulation issued pursuant to statutory authority, FTR para. 2-1.5e(1)(b) has the force and effect of law. James Pakis, B-193616, February 14, 1979; and 54 Comp. Gen. 638, 640 (1975).

Accordingly, since Mr. Callahan was not assigned overseas or appointed to an SES or manpower shortage position, NCUA had no authority to reimburse him for the travel and transportation expenses he incurred in reporting to his first duty station.

The General Counsel of NCUA states, however, that the charge to its operating fund for Mr. Callahan's relocation expenses has been transferred to the accounts of NCUA's Central Liquidity Facility (CLF). The CLF was created by Public Law 95-630, 92 Stat. 3680, November 10, 1978, an amendment to the Federal Credit Union Act, in order "to improve the general financial stability by meeting the liquidity needs of credit unions and thereby encouraging savings, support consumer and mortgage lending, and provide basic financial resources to all segments of the economy." 12 U.S.C. § 1795. It was established as a mixed-ownership Government corporation under 31 U.S.C. § 856 (now 31 U.S.C. § 9101(2)(G), as codified by Public Law 97-258, 96 Stat. 877, 1041 September 13, 1982), that would "exist within the National Credit Union Administration and be managed by the Board." 12 U.S.C. § 1795b.

The General Counsel of NCUA maintains that Mr. Callahan may be regarded as an employee of CLF since, as Chairman of NCUA's Board, he is responsible for managing the CLF. The General Counsel further argues that CLF is a Government-controlled corporation, and, under 5 U.S.C. § 5721 (1976), its employees are not subject to the relocation expense provisions of 5 U.S.C. Chapter 57, Subchapter II. On this basis, he argues that the CLF is free to implement its own policy with respect to reimbursement of the expenses incurred by Mr. Callahan.

We need not address the question whether CLF may establish its own policies regarding reimbursement of its employees' moving expenses, since it is clear that Mr. Callahan is an employee of NCUA, not CLF. The CLF, although established within NCUA, is expressly granted a separate indentity as a mixed-ownership Government corporation. Management of that corporation constitutes only one of Mr. Callahan's responsibilities as Chairman of NCUA's Board of Directors. As a Board member, he is also

responsible for chartering, examining, insuring, and supervising Federal credit unions, and for administering the National Share Insurance Fund.

Moreover, accounting and payroll data we obtained from NCUA shows that Mr. Callahan's salary is paid entirely from NCUA's operating fund, without reimbursement from funds allocated to CLF. As noted above, Mr. Callahan occupies a position in Level III of the Executive Schedule. See 5 U.S.C. § 5314. In contrast, we have been advised that although the salaries of CLF employees may be paid initially from NCUA's operating fund, CLF fully reimburses NCUA for those payments on a monthly basis.

Since Mr. Callahan must be regarded as an employee of NCUA, CLF's assumption of the charge for his relocation expenses has no bearing on his entitlement to such expenses. Accordingly, for the reasons stated above, we hold tnat Mr. Callahan was not entitled to be reimbursed for the travel and transportation expenses he incurred in reporting to his first duty station. Since this overpayment is not subject to waiver under 5 U.S.C. § 5584 (1982), Mr. Callahan must reimburse NCUA for these expenses.

Acting Comptroller General
of the United States