DECISION

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

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FILE: B-212648 **DATE:** February 6, 1984

MATTER OF: Murrel C. Hoage - Failure to Transfer After House-Hunting Trip

DIGEST:

Employee declined transfer after house-hunting trip, contending that he could not find suitable and affordable housing at new duty station. If reason for declination was in fact beyond employee's control and acceptable to agency, GAO will not object to agency's payment of expenses of house-hunting trip. However, whether or not reason meets this test is primarily for determination by agency, and GAO will not disturb agency's decision unless it is clearly erroneous, arbitrary, or capricious.

Mr. C. L. Winn, a certifying officer of the U.S. Department of the Interior, Bureau of Reclamation, Mid-Pacific Regional Office, requests an advance decision as to whether Mr. Murrel C. Hoage may be reimbursed for house-hunting expenses he incurred in anticipation of a permanent change of station which was not effected. We hold that the agency may pay the claimed expenses if it determines that the employee declined to transfer for a reason which was beyond his control and is acceptable to the agency.

Mr. Hoage, a grade GS-7 employee of the Bureau of Reclamation, Scoggins Dam, Gaston, Oregon, was placed in the Bureau's Surplus Employee Placement Program in anticipation of a transfer of functions from the Scoggins Dam office to the Tualatin Valley Irrigation District. As a result, he was offered a position, without having applied for it, as an Irrigation System Operator, grade GS-7, in the Cachuma Operations Office, Santa Ynez, California. He accepted the position, signing a continued service agreement on April 7, 1983. In order to seek permanent residence for his family, including a dependent grandchild, Mr. Hoage and his spouse performed authorized house-hunting travel to Santa Ynez between April 29 and May 7, 1983. He received a $2,000 travel advance for this purpose.

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Mr. Hoage was aware prior to his house-hunting trip that he would be required to live within a 10-mile radius of the Cachuma Operations Office. Additionally, the vacancy notice describing his new position indicated that, while houses for purchase were readily available in Santa Ynez, rental facilities were "somewhat scarce" and Government housing was non-existent. The employee claims, however, that he encountered greater difficulties than anticipated in finding suitable and affordable housing at his new duty station. Specifically, he states that the few rental facilities available in the Santa Ynez area exceeded an affordable price range, were outside of the specified 10-mile radius, or did not allow occupancy by children and pets. He also found that he was unable to secure permanent housing, since houses located within the specified distance from the project site were prohibitively expensive and required substantial downpayments. Mr. Hoage's efforts to secure motel accommodations on a monthly or weekly basis were also unsuccessful.

Since Mr. Hoage was unable to find housing in Santa Ynez, he declined to transfer to the Cachuma Operations Office and returned to his position at Scoggins Dam. Thereafter, he refunded the $2,000 travel advance and claimed $1,143.13 in house-hunting expenses. The agency questions whether it may pay the claimed expenses in view of the "mitigating circumstances" involved in Mr. Hoage's case. In this regard, the agency points out that the transfer was not requested by Mr. Hoage but was offered to him because of his surplus employee status, and that Mr. Hoage was unable to find suitable and affordable housing in Santa Ynez despite his extensive efforts.

Section 5724a(a)(2) of Title 5, United States Code (1982), authorizes an employee reimbursement of travel expenses to seek permanent quarters at the new official station when both the old and new stations are located within the continental United States. The pertinent parts of the implementing Federal Travel Regulations, FPMR 101-7 (September 1981), are found in paragraphs 2-4.3(a) and 2-1.5a(1)(a). Paragraph 2-4.3(a) provides:

> "a. <u>After employee's agreement to transfer</u>. A trip for finding residence quarters shall not be permitted at Government

> expense until after an employee has agreed to the transfer and the date of the transfer has been established, and shall not be authorized under circumstances where the purpose of the trip is to permit the employee to decide whether he/she will accept the transfer. If an employee accepts a transfer and, after making a trip to the new station for the purpose of finding permanent quarters or after the spouse has made such a trip, declines the transfer, he/she is subject to the provisions of 2-1.5a(1) concerning recovery of amounts reimbursed for travel."

Paragraph 2-1.5a(1)(a) provides:

> "(a) <u>Transfers within the conterminous United States and appointments and assignments of new appointees and student trainees to certain positions within the 50 States and the District of Columbia</u>. In connection with the transfer of employees between official stations within the conterminous United States, expenses for travel, transportation, moving and/or storage of household goods, and allowances as provided in these regulations shall not be allowed unless and until the employee selected for such transfer agrees in writing to remain in the service of the Government for 12 months following the effective date of transfer, <u>unless separated for reasons beyond his/her control and unless acceptable to the agency concerned</u>. In case of a violation of such an agreement, including failure to effect the transfer, any funds expended by the United States for such travel, transportation, and allowances shall be recoverable from the individual concerned as a debt due the United States. * * *" (Emphasis added.)

As this Office construes the foregoing statute and regulations, it would not object to the employing agency's payment of the authorized expenses of Mr. Hoage's house-hunting trip to Santa Ynez, provided it is determined by the agency that his failure to comply with the continued service agreement--in this case failure to transfer--was in fact for a reason beyond his control and acceptable to the agency. The determination as to whether Mr. Hoage's reason for declining to transfer meets this test is primarily a matter for the agency, and will not be disturbed by this Office unless it is clearly erroneous, arbitrary, or capricious. See Richard J. Hughes, B-197816, June 24, 1981; and William C. Moorehead, 56 Comp. Gen. 606, 607 (1977).

We note that the limited number of available rental units in the Santa Ynez area, and the geographical features of the area that further limited the number of available residences were not known to Mr. Hoage prior to the beginning of his house-hunting trip. Thus, applying the above standard to this case, it appears that Mr. Hoage, at all times, acted in good faith, and finally declined the transfer only because of the scarcity of appropriate housing for his family. These facts would seem to support a finding that he declined the transfer for reasons that were beyond his control, and reimbursement would appear to be proper.

We are returning Mr. Hoage's voucher to the Bureau of Reclamation for settlement in accordance with the foregoing.

for Milton J. Socolar
Comptroller General
of the United States