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DECISION

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

FILE: B-216197 **DATE:** February 19, 1985

MATTER OF: John E. Wright - Travel and Relocation Expenses - Long-Term Training

DIGEST:

1. An employee was sent to a location away from his old duty station for long-term training to be followed by a permanent change of station (PCS) to a then undetermined location. Employee claims reimbursement for his move to the training site as a PCS move since he was promoted for purpose of that travel under agency merit promotion program. Since travel to a location for training contemplates either a return to the old duty station or another permanent duty station upon its completion, a training site is but an intermediate duty station. Until the employee is actually transferred to a new permanent duty station, the duty station from which he traveled to the training site remains his permanent duty station.

2. An employee received a permanent change of station (PCS), with long-term training at an intermediate location en route. Employee claims travel and relocation expenses to the training location under 5 U.S.C. §§ 5724 and 5724a. Although PCS expense reimbursements are governed by sections 5724 and 5724a, travel and transportation rights for long-term training are specifically governed by 5 U.S.C. § 4109. Hence, an employee's entitlements for travel to a training location are limited by those provisions. Since an agency is authorized to limit reimbursement under section 4109, where employee was

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informed before being accepted into the training program that all travel and transportation expenses to the training site would have to be borne by him as a condition of acceptance and all trainees were treated equally, his travel and transportation expenses to the training location may not be certified for payment.

3. An employee received a permanent change of station (PCS), with long-term training at an intermediate location en route. Employee was reimbursed for travel and relocation expenses under 5 U.S.C. §§ 5724 and 5724a from the training site to new PCS location, but not for expenses of sale of residence at old duty station. His claim for the sales expenses is allowed. An employee away from his duty station for training has not effected a change of station during pendency of that assignment. Therefore, where an employee and family are not actually residing at the old duty station because of long-term training elsewhere, such residence nonoccupancy does not preclude reimbursement for expenses of the residence sale upon his move to his new permanent duty station, so long as all other conditions of entitlement are met. See decisions cited.

This decision is in response to a request from the Director, Office of Budget and Finance, Veterans Administration. It involves the entitlement of one of its employees to be reimbursed for travel and relocation expenses incurred incident to training under 5 U.S.C. § 4109 and to a subsequent permanent change of station. The employee's claim may be allowed, in part, for the following reasons.

BACKGROUND

Mr. John E. Wright, an employee of the Veterans Administration (VA) Medical Center, Martinez, California, applied for and was accepted into an agency sponsored training program. This program, which was part of the agency's merit promotion program, was designed to develop technical, supervisory, and managerial skills in the trainees in order that they could ultimately administer a prosthetics assistance program in the various VA Medical Centers. The particular training program in which Mr. Wright participated was to be conducted at any one of six selected locations; it would be for a 12-month period; and, upon successful completion of the training, each participant would be transferred to one of the medical centers within the VA system, the location of which was to be determined at or near the completion of training.

The training site selected for Mr. Wright was the VA Medical Center, Kansas City, Missouri. By Intra-Agency Transfer Request, dated August 4, 1982, he was sent there, effective August 22, 1982. Following completion of his training, he was transferred to the VA Outpatient Clinic, El Paso, Texas, and reported for duty there on or about September 22, 1983.

Subsequent to his transfer to El Paso, Mr. Wright claimed and was reimbursed expenses incurred incident to his move from Kansas City, Missouri, to El Paso, Texas, including expenses associated with the purchase of a residence in the El Paso area. In addition, he sought reimbursement for the expenses attendant to his and his family's August 1982 travel from Martinez, California, to Kansas City, Missouri, temporary quarters subsistence expense in Kansas City, and movement of his household goods to that location. He also included in that claim the expenses incurred in selling his home in Martinez, California, in August 1983.

The additional claim was disallowed by the VA in its entirety because Mr. Wright had been informed before he was accepted into the training program that, as a condition of acceptance, none of the expenses he might incur incident to moving to Kansas City for training or while there would be reimbursed by the Government. He also had been informed

that the time spent traveling from Martinez, California, to Kansas City, Missouri, would be charged to annual leave, or he would be placed in a leave without pay status, at his option, but in no event would he be granted administrative leave. The disallowance was concurred in by the Director, Finance Service, Department of Medicine and Surgery, Veterans Administration, citing to our decision Stephen T. Croall, 60 Comp. Gen. 478 (1981), as authority.

Mr. Wright has appealed that determination. Although he admits he was told that he was not entitled to moving expenses or administrative leave for his move to Kansas City, he contends that none of the documents which he was required to sign made specific reference to the fact that the expenses of the move would not be reimbursed. Further, he contends that his move to Kansas City was a permanent change of station in the interest of the Government under the VA merit promotion program, since he was promoted at the time of his transfer to Kansas City. As such, he claims that his expenses incident to that transfer are reimbursable, citing to our decision Eugene R. Platt, 59 Comp. Gen. 699 (1980).

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The agency submission seems to characterize Mr. Wright's transfer from Martinez, California, to Kansas City, Missouri, and then to El Paso, Texas, for permanent duty, as constituting two separate and distinct transfers with only the latter being as a merit promotion transfer. We do not agree.

An employee's entitlement to be reimbursed the expenses of travel and relocation upon a permanent change of station arises under 5 U.S.C. §§ 5724 and 5724a (1982), and is conditioned upon the determination by the head of the agency concerned 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 paragraph 2-1.3 of the Federal Travel Regulations, FPMR 101-7 (September 1981) (FTR). See also Michael J. DeAngelis, B-192105, May 16, 1979, and Paul J. Walski, B-190487, February 23, 1979.

In situations involving merit promotion transfers where an agency's own regulations provide that such transfers are in the Government's interest, we have allowed relocation expenses, even where the agency informed the employee that he would have to pay his own expenses. Stephen P. Szarka, B-188048, November 30, 1977.

In decision Eugene R. Platt, 59 Comp. Gen. 699 (1980), and Reconsideration of Platt, 61 Comp. Gen. 156 (1981), we addressed the issue of merit promotion transfers in the absence of agency regulations. In those decisions, we ruled that, while an agency is not precluded from limiting relocation benefits by regulation for merit promotion transfers, where there are no limiting agency regulations, vacancy announcements under a merit promotion program are considered to be recruitment actions in the interest of the Government and relocation allowances are payable.

In the present case, the initial announcement concerning the training program was contained in a TWIX, dated May 5, 1982, from the VA Central Office. Item 5 of the announcement provided, in part, that "[a]ggressive action will be taken * * * to recruit high quality candidates for the * * * program."

The vacancy announcement, which was actually issued May 18, 1982, provided that the entry grade for a prosthetics representative trainee was a grade GS-5/6/7 and that the placement position following training was in grade GS-7 or 9.

Mr. Wright was already serving in one of the entry level grades before he was accepted into the program and could have simply been given a lateral transfer into the prosthetics representative career ladder. Notwithstanding that, the record shows that Mr. Wright was promoted to grade GS-7, step 1, effective August 22, 1982, the date he was transferred to Kansas City, Missouri, for training. Therefore, it is our position that the announcement for training was a merit promotion announcement contemplating a permanent change of station to a then undetermined location for qualified applicants, with long-term training at an intermediate location en route. Notwithstanding that position, it is our view that the benefits under 5 U.S.C. §§ 5724 and 5724a are not available to Mr. Wright for all parts of his permanent change of station.

Under the facts, Mr. Wright's permanent change-of-station travel was in two distinct parts. The first part was his journey from Martinez, California, to Kansas City, Missouri, an intermediate duty station for training, and the second part was his journey from Kansas City, Missouri, to El Paso, Texas, his new permanent duty station. Since travel expense reimbursement rights for long-term training are governed by a specific statutory provision (5 U.S.C. § 4109), our decisions, Eugene R. Platt and Reconsideration of Platt, cited above, which construe merit promotion travel and transportation benefits under 5 U.S.C. §§ 5724 and 5724a, would not apply to Mr. Wright's possible travel and transportation benefits for his journey from Martinez, California, to Kansas City, Missouri.

Section 4109 of Title 5, United States Code, provides, in part in subsection (a)(2) that an agency may pay or reimburse an employee for all or part of the necessary expenses of training, including the costs of--

> "(A) travel and per diem instead of subsistence * * *;
>
> (B) transportation of immediate family, household goods and personal effects, packing, crating, temporarily storing, draying, and unpacking * * * when the estimated costs of transportation and related services are less than the estimated aggregate per diem payments for the period of training * * *;"

In decision Michael G. Pond, 58 Comp. Gen. 253 (1979), and Reconsideration of Pond, B-193197, January 10, 1980, we analyzed the type of duty assignment contemplated by the above provisions and the benefits available to the individuals incident to such assignments. We stated therein that "[i]t must be recognized that travel for training is not ordinary TDY or PCS travel but is in a class by itself." Michael G. Pond, at 257. We ruled, therefore, that the travel expenses payable in connection with long-term training assignments are limited to those expense items specifically authorized in 5 U.S.C. § 4109, and not otherwise limited by agency proscription. See also Stephen T. Croall, above.

As we understand it, other than the expenses immediately associated with the administrative cost of training given at each location, none of the VA trainees were reimbursed for travel to their training sites. In this regard, Mr. Wright acknowledges that he was specifically informed before he was accepted into the training program that all expenses attendant to his move to Kansas City would have to be borne by him as a condition to his acceptance into the program. We also note that the VA Form 5-3918, Intra-Agency Transfer Request, initiated by the personnel office of the VA Medical Center, Kansas City, on August 2, 1982, relating to that training, and signed by Mr. Wright on August 4, 1982, provides in item 15 thereof, that travel and transportation was not authorized. In view thereof, the expenses claimed by Mr. Wright as having been incurred incident to his move from Martinez, California, to Kansas City, Missouri, may not be certified for payment.

Notwithstanding the foregoing, it is our view that the real estate sales expenses incurred by Mr. Wright and not previously allowed may be reimbursed.

Paragraphs 2-1.4i and 2-6.1d of the FTR, when read in combination, generally establish the requirement that in order for an employee to be reimbursed the expenses of the sale of the residence at his old station, he must live there at the time of transfer notice and that it is the place where he regularly commutes to and from work. Notwithstanding that general requirement, since an employee away from his duty station on Government business does not effect a change of station during the pendency of such assignment (52 Comp. Gen. 834 (1973)), we have recognized exceptions to the "actual residence" rule when a permanent change of station occurs while an employee is on extended temporary duty (Frank M. Lindeen, B-188657, December 30, 1977); is constantly in a travel status with no single, true official duty station (Billy L. Kenney, B-188706, December 14, 1978); or is performing a long-term training assignment contemplating a return to his then permanent duty station upon completion of training (B-164043, May 28, 1968). It is our view that the principle embodied in those decisions is equally applicable here. That is, where the employee and his family are not residing in their residence at the old duty station because of Government training or

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travel requirements at the time a permanent change-of-station move occurs, such residence nonoccupancy does not preclude reimbursement for the expenses of selling their residence at the old permanent station upon that subsequent move, so long as all other conditions of entitlement are met. See also Hughie L. Ratliff, B-192614, March 7, 1979.

In this regard, we have held that real estate expenses incurred prior to and in anticipation of a transfer of an employee's official duty station may be allowed, but only if a travel order is subsequently issued on the basis of a previously existing administrative intent to transfer the employee at the time the expenses were incurred. 48 Comp. Gen. 395 (1968); Joan E. Marci, B-188301, August 16, 1977; and Bernard J. Silbert, B-202386, September 8, 1981. Compare Edwin C. Hoffman, Jr., B-213085, January 16, 1984.

In the present case, Mr. Wright sold his residence in the Martinez, California, area on August 4, 1983. Although his transfer to El Paso had a reporting date of September 22, 1983, we were informed that Mr. Wright was definitely advised of this transfer on or about June 15, 1983. In view of these facts, his expenses for selling his old residence are properly reimbursable as part of his transfer to El Paso, subject, of course, to administrative analysis as to the propriety of the items claimed and the amounts involved.

for Milton J. Socolar
Comptroller General
of the United States