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DECISION



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

FILE: B-215511

DATE: June 12, 1985

MATTER OF: Betsy L. Randall - Relocation Expenses -
Employment Offer Withdrawn

DIGEST:

Travel and transportation expenses for new appointees to manpower shortage positions in the Federal service are authorized by law and the Federal Travel Regulations. Claimant was selected for appointment to such a position in Asheville, North Carolina, and signed a 12-month service agreement. Agency issued a travel order and advanced funds to claimant for travel expenses, but withdrew offer of employment prior to reporting date due to budget constraints. Claimant is not liable for portion of travel advance paid by agency relating to relocation travel since failure to fulfill service agreement was for reasons beyond her control. There is no authority to allow remainder of expenses. However, since Ms. Randall acted in good faith reliance on her selection for appointment and representations of agency officials, we conclude the equities of the case warrant our reporting this matter to Congress under the Meritorious Claims Act.

This decision is in response to a request from the United States Department of Agriculture concerning the continuation of collection efforts against Ms. Betsy L. Randall, to recover a travel advance made to her as an appointee to a manpower shortage position. For the reasons which follow, only a portion of the expenses may be retained. However, we are reporting this matter to Congress pursuant to the Meritorious Claims Act.

BACKGROUND

On December 22, 1981, Ms. Randall was offered and accepted a position as a GS-11 Supervisory Plant Pathologist with the Forest Service, United States Department of Agriculture, in Asheville, North Carolina, with a reporting date of January 25, 1982. The offer

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advised Ms. Randall that she was entitled to reimbursement for travel and relocation expenses from Raleigh, North Carolina, to Asheville, North Carolina, in that the position was determined to be a shortage category appointment. See para. 2-1.2a(3) of the Federal Travel Regulations, FPMR 101-7 (September 1981) (FTR) incorp. by ref., 41 C.F.R. § 101-7.003 (1983). Ms. Randall was given a Travel Authorization, AD-202, dated January 6, 1982, along with a travel advance in the amount of \$2,339.25. The Travel Authorization authorized per diem, mileage, and transportation and storage of household goods for her and her husband.

Subsequent to the issuance of the Travel Authorization to Ms. Randall, the Forest Service determined, due to budget constraints, that it would be unable to fill the position offered to Ms. Randall, and on January 21, 1982, she was notified that the job offer was rescinded. Prior to January 21, 1982, but subsequent to the issuance of the Travel Authorization, Ms. Randall incurred expenses for the rental of an apartment in Asheville, heating oil, water and sewage deposit, electricity, and mileage. By letter of May 28, 1982, Ms. Randall repaid \$1,767.43 of the travel advance, but retained \$571.82 to cover the expenses she had incurred incident to her travel to Asheville and the rental of an apartment there along with the connection of utilities. The Forest Service requested that Ms. Randall refund the portion of the travel advance that she retained since she never became a Forest Service employee and was not entitled to any relocation reimbursement. Ms. Randall has requested that she be permitted to retain these funds as she incurred the underlying expenses in good faith reliance on the offer of employment, the written travel authorization, and the advance of travel funds.

OPINION

The authorization for the payment by the Government of the travel and transportation expenses of new appointees to a position in the United States for which it is determined there is a manpower shortage is statutory. Section 5723(a) of title 5, United States Code, authorizes the reimbursement of travel and transportation expenses for new appointees appointed to manpower shortage positions. The statute in section 5723(b) expressly conditions such reimbursement on the individual's agreement

to remain in the Government service for 12 months after the appointment unless separated for reasons beyond his or her control which are acceptable to the agency. Section 5723(c) further provides that the agency may pay these expenses whether or not the individual selected has been appointed at the time of travel. The regulations implementing the statutory provisions appear in the FTR. Paragraph 2-1.5a(1)(b) of the FTR expressly provides that, "[i]n case of 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."

It is not necessary that an individual be appointed before an agency may pay the travel and transportation expenses. Although section 5723(a) refers only to a "new appointee," the language of section 5723(a) is specifically made subject to the implementing regulations and to subsections (b) and (c) of section 5723. Section 5723(b) states that an agency may pay expenses under subsection (a) "only after the individual selected agrees in writing to remain in the Government service for 12 months after his appointment * * * unless separated for reasons beyond his control which are acceptable to the agency concerned." If the agreement is made, subsection (b) further provides that, if the individual violates the agreement, the expenses paid by the agency are recoverable as a debt due the United States. In our opinion, section 5723(a) when read together with section 5723(b) clearly covers individuals selected for appointment as well as "new appointees." See Dr. William Post, Jr., B-196795, June 5, 1980.

In the present case, Ms. Randall was an individual selected for appointment to a manpower shortage position, and she did sign the 12-month service agreement. Hence the Forest Service was authorized to pay her expenses under section 5723(a). The record shows that Ms. Randall did not complete the service obligation for reasons clearly beyond her control, i.e., her offer of employment was rescinded. Therefore, Ms. Randall is entitled to be reimbursed for her travel expenses, including mileage allowance and applicable per diem, for her trip from Raleigh to Asheville. However, Ms. Randall has charged a roundtrip mileage allowance against her travel advance (\$96.00). Since we are not aware of any authority,

including 5 U.S.C. § 5723, which authorizes return mileage for a new employee hired and employed within the continental United States after the expiration of the term of service, Ms. Randall would not have been eligible for return travel to Raleigh even if she had been allowed to complete her service agreement. Therefore, only \$48 of the claimed \$96 mileage allowance may be approved.

The agency questions the effect of its rescission of Ms. Randall's job offer prior to her actual reporting date on her entitlement to travel allowances. As indicated above, Ms. Randall's actual reporting date is not one of the operative facts from which her travel entitlement accrues. Since at the time of her travel from Raleigh to Asheville, Ms. Randall was an individual selected for appointment and since she traveled under properly executed travel orders prior to the rescission of her job offer, she is entitled to a \$48 mileage allowance without regard to her actual reporting date.

However, 5 U.S.C. § 5723, as amended, does not authorize a new appointee reimbursement for residence purchase or rental expenses. Of the \$571.82 which Ms. Randall charged against her travel advance, only the mileage charge is not related to her rental of an apartment in Asheville. Her other expenses for rent and utilities could not have been reimbursed even if Ms. Randall had commenced work for the Forest Service as originally proposed.

Ms. Randall received a travel advance in the amount of \$2,339.25, as noted above, of which she has already refunded \$1,767.43. This Office has always considered travel expense advancements to be in the nature of a loan. 54 Comp. Gen. 190 (1974). Thus, the money was loaned to Ms. Randall for the purpose of traveling to Asheville in connection with her proposed appointment. Hence, we find no basis for Ms. Randall to keep the amount of the advance, except for the mileage allowance. See 5 U.S.C. § 5705 (1982).

However, in view of the fact that Ms. Randall acted in good faith reliance on her selection for appointment and the representations of agency officials, we feel the equities in the instant case are such as to warrant our reporting this matter to the Congress pursuant to the Meritorious Claims Act, 31 U.S.C. § 3702(d) (1982).

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Accordingly, we are forwarding a report to the Congress requesting that Ms. Randall be relieved from liability to the United States for the balance of \$523.82 remaining due on her travel advance. Further collection action should be suspended pending congressional consideration of our request.

for 
Comptroller General
of the United States