

DECISION



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

FILE: B-217630

DATE: July 25, 1985

MATTER OF: Steve W. Fredrick - Relocation Expenses

DIGEST:

1. Employee of the Defense Contract Audit Agency, transferred from Houston to New Orleans, was authorized travel, relocation, and miscellaneous expenses. He is entitled to retain such expenses since legal rights and liabilities in regard to per diem and other travel allowances vest when the travel is performed under orders and such orders, if valid, may not be canceled or modified retroactively to increase or decrease the rights which have become fixed under the applicable statutes and regulations. Since original orders were not clearly erroneous, agency's re-determination 4 years after the fact that the transfer had not been in the best interest of the government cannot be given effect.

2. Employee of the Defense Contract Audit Agency, transferred from Houston to New Orleans, was authorized travel, relocation, and miscellaneous expenses, but not real estate expenses. He is entitled to reimbursement of real estate expenses in accordance with Part 6, Chapter 2 of the Federal Travel Regulations, since the transfer was in the interest of the government and the regulations contemplate that certain expenses will be uniformly allowed to all transferred employees.

Mr. Steve W. Fredrick requests reconsideration of our Claims Group's October 19, 1984, denial of his claim for reimbursement of relocation expenses incurred incident to his transfer from Houston, Texas, to New Orleans, Louisiana. The denial is reversed.

Mr. Fredrick was employed by the Internal Revenue Service (IRS) in Houston, Texas, as a GS-7 Internal Revenue

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Agent, when on February 23, 1978, he forwarded a Personal Qualifications Statement (Standard Form 171) to the then Civil Service Commission (CSC) Regional Office in San Antonio, Texas, to apply for any government positions for which he might qualify in either New Orleans or Baton Rouge, Louisiana. In June 1978, the Defense Contract Audit Agency (DCAA) requested that the CSC furnish it a Certificate of Eligibles in order to fill a vacancy in its New Orleans Branch Office for an Auditor Trainee (GS-510-7/9). Mr. Fredrick's name appeared on the Certificate along with several other qualified trainee eligibles.

By letter dated August 29, 1978, the DCAA confirmed Mr. Fredrick's selection to the position of Auditor, GS-510-9, with its New Orleans Branch Office with a reporting date of September 17, 1978. At the time of the DCAA offer, Mr. Fredrick was a GS-510-9 with IRS. The agency's appointment letter authorized a relocation allowance of \$200, cost of movement of household goods, mileage and per diem. However, it did not authorize any payment for real estate expenses. Mr. Fredrick filed a travel voucher on November 2, 1978, in the amount of \$1,470.53 which was paid. On November 10, 1982, an additional claim of \$3,740 was filed for the sale of a residence in Houston, Texas, and purchase of a new residence in Slidell, Louisiana. The real estate transaction expenses had been incurred in October 1978.

Upon receipt of Mr. Fredrick's claim for real estate expenses in November 1982, the agency made a review of the circumstances resulting in Mr. Fredrick's claim. At this time, DCAA concluded that 4 years earlier it had issued an erroneous authorization of permanent change-of-station entitlements. The agency now concludes that Mr. Fredrick's transfer in 1978 was for his interest and not for the interest of the government. The agency reasoning is based on the view that the employee wanted to transfer to New Orleans and DCAA was accommodating Mr. Fredrick even though the CSC register contained several other non-government employee applicants who also were qualified and willing to accept the Auditor Trainee position in New Orleans. Based upon this analysis, the agency denied the employee's claim for real estate expenses and requested repayment of the \$1,470.53 paid to Mr. Fredrick in 1978.

Our Claims Group denied the claim essentially agreeing with the agency that the transfer was at the employee's request and primarily for his own convenience. We disagree,

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for the reasons which follow, and reverse the Claims Group's denial.

Retroactive Modification of Travel Orders

It is well established that legal rights and liabilities in regard to per diem and other travel allowances vest when the travel is performed under orders, and that such orders may not be canceled or modified retroactively to increase or decrease the rights which have become fixed under the applicable statutes and regulations. Exceptions to that rule have been recognized where such modifications are made within a reasonable time after the issuance of the basic orders to correct an error apparent on the face of the orders, or if all the facts and circumstances clearly demonstrate that some provision previously determined and definitely intended had been omitted through error or inadvertence in the preparation of the orders. Julie M. Gunderson, B-215569, January 11, 1985; Dr. Sigmund Fritz, 55 Comp. Gen. 1241, 1242 (1976); 51 Comp. Gen. 736 (1972).

Consistent with this rule, we have held that permanent change-of-station orders may not be canceled after all the travel and transportation activities required to complete the permanent move have been accomplished and the orders have been fully executed, when there is no indication that the orders were materially in error when issued. Vernon E. Adler, B-204210, April 5, 1982.

The record before us does not clearly indicate such an error in issuing Mr. Fredrick travel orders pursuant to his offer of employment and permanent change of duty station. There is a presumption that a determination had been made by an agency official that Mr. Fredrick's transfer was in the government's interest in order for the travel orders to have been issued in September 1978. The agency now believes, over 4 years after the fact, that the determination was made in error. We find the record to be inconclusive on the question of whether the transfer was primarily for the convenience of the employee or for the interest of the Government. In any event, even if this subjective determination was erroneously made, it clearly does not represent an error apparent on the face of the orders or a demonstration that some provision previously determined and definitely intended had been omitted through error, as required by the exception to the rule on modifying or canceling travel orders set forth above. Therefore, Mr. Fredrick is entitled to retain his travel, relocation, and miscellaneous expenses.

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Real Estate Transaction Expenses

Relocation expenses for Federal employees are governed by Chapter 2 of the Federal Travel Regulations. Expenses for the sale of a residence at the old duty station and the purchase of a residence at the new duty station are covered in Part 6 of Chapter 2. We have denied an employee's request for reimbursement of these expenses where the transfer was solely for the employee's benefit and not in the interest of the government. However, that is not an issue at this point since, as discussed above, we have determined that certain relocation expenses were properly authorized. Also, the record indicates that Mr. Fredrick has signed a service agreement and has been reimbursed by his agency for other allowable relocation expenses under Chapter 2 of the Federal Travel Regulations. The only question, then, is whether the agency can reimburse the employee for some relocation expenses while denying reimbursement of others.

This matter is well settled. Mr. Fredrick is entitled to reimbursement of expenses for the sale of a residence at his old duty station and purchase at his new duty station in accordance with the provisions of Part 6, Chapter 2, Federal Travel Regulations. Although some relocation expenses are discretionary, we stated in Residence Transaction Expenses, 55 Comp. Gen. 613, 614 (1976), that the regulations "contemplate that certain allowances will be allowed uniformly to transferred employees." The expenses authorized in Part 6 in connection with residence transactions fall into this category, and DCAA has no discretion to reduce or change benefits otherwise provided by regulation. Rose Inouye, 3-194196, November 14, 1979. In this regard we also point out that budgetary constraints are not an acceptable reason for the denial of relocation expenses to a transferred employee. David C. Goodyear, 56 Comp. Gen. 709 (1977).

Accordingly, both of Mr. Fredrick's vouchers covering his relocation expenses, including real estate transactions, may be certified for payment, if otherwise proper.

Wilton J. Taylor
for Comptroller General
of the United States