

# DECISION



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

**FILE:** B-216938

**DATE:** November 12, 1985

**MATTER OF:** Phillip M. Napier - Request for Reconsideration

- DIGEST:**
1. An Internal Revenue Service employee was transferred from Indianapolis, Indiana, to Fairbanks, Alaska. After completion of a 2-year service period specified in the service agreement, the employee requested a transfer to Portland, Maine, for personal reasons. The service did not authorize relocation expenses and the employee disposed of most of his household effects before departing Fairbanks. He is claiming an amount equal to the cost of transporting his household effects to Alaska. The claim may not be paid since the law and regulations provide for reimbursement on the basis of the weight of the household effects actually transported.
  2. A former Internal Revenue Service employee seeks reconsideration of his claim for real estate expenses. Our decision of January 3, 1985, denied his claim because the employee requested the transfer for personal reasons. Since the agency determination that the transfer was not in the interest of the Government is in accordance with decisions of this Office, and the employee failed to complete 1 year of service following the transfer, the prior decision is reaffirmed.
  3. In order to obtain a reversal of a prior decision, a material mistake of law or fact must be proven. The claimant has raised no new arguments in support of his claim for real estate expenses that were not considered in the prior decision. Mere disagreement with the previous decision is not a proper basis for reversal of a decision upon reconsideration.

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This action is in response to a request for reconsideration of our decision, Phillip M. Napier, B-216938, January 3, 1985, by Mr. Napier. The facts of that case are briefly summarized.

Mr. Phillip M. Napier was an employee of the Internal Revenue Service who was transferred from Indianapolis, Indiana, to Fairbanks, Alaska. By transportation agreement with Mr. Napier, the Internal Revenue Service agreed to pay Mr. Napier's travel expenses and the transportation of his dependents and household effects from Indianapolis to Fairbanks. In exchange, Mr. Napier agreed to work in Fairbanks for at least 2 years. Upon completion of this 2-year period, Mr. Napier would be eligible for payment of the same expenses on return. The transportation agreement did not authorize the payment of any real estate expenses to Mr. Napier. These expenses were authorized by a separate document after the agency determined that the transfer was in the interest of the Government.

Over 2 years later, Mr. Napier requested and was granted a transfer to Portland, Maine. Mr. Napier subsequently petitioned for reimbursement of relocation expenses. The Service agreed to reimburse him pursuant to the transportation agreement for the cost of travel expenses and transportation of his household goods from Fairbanks to Indianapolis. It denied his claim for real estate expenses associated with the sale of his residence in Fairbanks because it found that the transfer was not in the interest of the Government.

Mr. Napier then submitted a claim for real estate expenses to the Claims Group of this Office. This claim was denied. The decision of the Claims Group was sustained by this Office in the decision cited above.

Our previous decision in this case held that the payment of the real estate expenses incident to the transfer from Fairbanks to Portland could only be authorized under 5 U.S.C. § 5724a (1982). The authorization provided by section 5724a is separate and distinct from the authorization in 5 U.S.C. § 5722, which provides for the payment of only travel and transportation expenses. It was under section 5722 that the transportation agreement provided for reimbursement of the expenses of moving Mr. Napier, his

dependents and his household goods from Indianapolis to Fairbanks. Likewise, the transportation agreement was the basis for payment incident to the transfer to Portland of the constructive cost of the travel and transportation expenses from Fairbanks to Indianapolis. On the other hand, entitlement to real estate expenses is dependent upon an agency determination that the transfer is in the interest of the Government. The record clearly shows that Mr. Napier's move was at his own request and that he accepted a reduction in grade in order to facilitate the transfer. Relocation expenses may not be paid where a transfer is primarily for the employee's convenience and not in the interest of the Government. B-174997, April 21, 1972. In light of these facts, we held that the Service reasonably found that the transfer was not in the Government's interest and, as such, Mr. Napier was not entitled to real estate expenses under section 5724a.

In his request for reconsideration Mr. Napier states that the Service refused to return him to Indianapolis and then denied his claim because of his request for a "hardship transfer." He asks that the Internal Revenue Service honor the terms of the service agreement.

Mr. Napier says that upon completion of 2 years of service in Fairbanks he asked to be returned to Indianapolis. The Internal Revenue Service denied his request. Mr. Napier apparently believes that under the service agreement he was entitled to be transferred back to Indianapolis upon completion of 2 years of service. That assumption is erroneous. The agreement was not that the Service would transfer him to Indianapolis but only that the Service would pay certain costs of his return to the contiguous 48 states after completion of 2 years of service. He had no right to a retransfer to Indianapolis.

Mr. Napier subsequently requested a transfer to a lower grade position in Maine. This is the transfer request that he refers to as a "hardship transfer." The Internal Revenue Service authorized this transfer as being for Mr. Napier's benefit and not primarily in the interest of the United States. Therefore, as provided in 5 U.S.C. § 5724 none of the costs of the transfer could be paid by the Government. However, since he had completed his

assignment in Fairbanks, he was entitled to fall back on the travel and transportation benefits he had earned pursuant to his employment agreement.

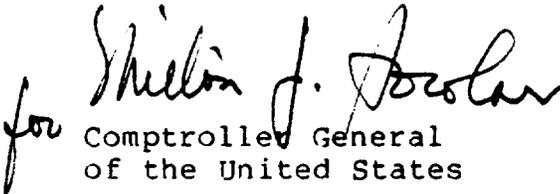
The Internal Revenue Service honored the terms of the service agreement. The agreement bound the Government to pay Mr. Napier the travel expenses of himself and his immediate family and the cost of transporting his household goods from Fairbanks to Indianapolis. The prior decision noted that these entitlements had been paid. We understand that Mr. Napier has not been paid any amount for transportation of his household effects. This is because he disposed of most of his household effects prior to departing Fairbanks. Despite this, he has submitted vouchers seeking to be paid an amount equaling the cost of transporting his household goods to Fairbanks. He stated that "a similar amount would have been incurred" if the goods had actually been transported back to Indianapolis. Because the law and regulations provide for reimbursement on the basis of the weight of household goods actually transported, Mr. Napier may not be paid an amount representing the cost that would have been incurred had the goods been moved. See paragraph 2-8.4, Federal Travel Regulations (Sept. 28, 1981), incorp. by ref., 41 C.F.R. § 101-7.003 (1983).

Mr. Napier also claims real estate expenses. He is not entitled to these expenses for several reasons. First, the transportation agreement did not commit the Internal Revenue Service to pay real estate expenses. Second, and as discussed previously, the Internal Revenue Service's determination that the transfer from Fairbanks to Portland was not in the interest of the Government was reasonable. In any event, as noted in our prior decision, Mr. Napier resigned his position with the Internal Revenue Service less than a year after his transfer to Portland. Because he did not complete 1 year of service as required by 5 U.S.C. § 5724(i), even if he had been entitled to real estate expenses, the Government would be required by law to recover any amounts paid.

This discussion has merely restated the finding of our prior decision in an attempt to clarify it. Mr. Napier's letter requesting reconsideration does not present any new information or argument that has not already been considered. Instead, he restates his belief that his claim

for reimbursement was denied because of his request for a hardship transfer. That issue was specifically covered in the prior decision. Mere disagreement with a previous decision of this Office is not a proper basis for reversal of a decision upon reconsideration. Where there is no new evidence to show that there was a material mistake of law or fact in a prior decision of this Office, we will reaffirm that decision. Allen Business Machines Company, B-182766, April 19, 1977.

Finally, Mr. Napier asks what course of action is available in the event that his claim is denied. Decisions of the Comptroller General are binding upon the executive branch. However, independent of adjudication by us the United States Claims Court and the appropriate United States District Court have jurisdiction to consider claims by individuals to pay or allowances they believe to be due them as Government employees.

for   
Comptroller General  
of the United States