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**DECISION**



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

**FILE:** B-219813

**DATE:** June 24, 1986

**MATTER OF:** Jack L. Henry - Relocation Expenses -  
Retirement After Return to Former Duty  
Station

**DIGEST:**

Employee who was transferred from Idaho Falls, Idaho, to Albany, Oregon, failed to complete 12-month service requirement when he voluntarily retired. The employee had requested retirement for health reasons so that he could return to Albany, Oregon. However, this case is distinguished from those cases where the employee transfers solely for retirement purposes since, here, agency requested employee to remain on duty for approximately 3 months and employee performed necessary and substantial duty at Albany, his new official duty station, prior to his retirement. Compare James D. Belknap, B-188597, June 17, 1977. Thus, his transfer is considered to be in the interest of the Government, and his voluntary retirement prior to completion of the 12-month service period may be considered as a valid reason for separation, and his travel and transportation expenses may be paid, subject to a determination by the head of the agency that his separation was for reasons beyond his control, and acceptable to the agency.

The issue in this decision is whether a transferred employee who did not complete the required term of Government service at Albany, Oregon, his new duty station, is entitled to travel and transportation expenses incident to his transfer. The employee had requested retirement for health reasons so that he could return to Albany, Oregon. Since the agency requested the employee to remain with the agency for approximately 3 months and he performed necessary

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B-219813

and substantial duty at Albany prior to his retirement, his transfer is considered to be in the interest of the Government. Thus, he may be reimbursed upon a-determination by his agency that his separation was beyond his control and acceptable to the agency.

This decision is in response to a request by Mr. Dennis A. Sykes, Chief, Division of Finance, Bureau of Mines, United States Department of the Interior, for an advance decision as to the propriety of certifying for payment a travel voucher submitted by Dr. Jack L. Henry, a former employee of the agency. Dr. Henry's claim is for travel and transportation expenses in the amount of \$632.65 incurred in connection with his transfer from Idaho Falls, Idaho, to Albany, Oregon, in June 1985.

The pertinent facts are as follows. In September 1984, Dr. Henry was transferred from Albany to Idaho Falls to serve as a Technical Project Officer in connection with the Bureau's Interagency Agreement with the United States Department of Energy. The original intent of the Bureau was to place Dr. Henry on long-term temporary duty travel at a reduced per diem since the program was expected to continue until May 1985, but the specific duration was not known. However, Dr. Henry agreed to move to Idaho Falls provided the Bureau would pay his travel expenses, and the rental cost of a small trailer to transport his personal belongings. This arrangement was acceptable to the agency since the cost of the stated travel and transportation expenses was considerably less than the per diem estimated cost.

Dr. Henry suffered a severe heart attack in Idaho Falls and underwent multiple bypass heart surgery. This condition made it extremely difficult for him to continue living and working at the higher altitude of Idaho Falls. Consequently, Dr. Henry requested that he be allowed to retire from Government service, and return to Albany, Oregon. The Bureau officials asked Dr. Henry to remain with the agency for about 3 months in a full-time, permanent capacity in Albany before he retired, and to remain on the rolls as a reemployed annuitant for some months after that date to assist in training a new Technical Project Officer. Thus travel orders were issued authorizing his return to Albany in June 1985. Dr. Henry returned to Albany on June 29, 1985, and retired on November 1, 1985. Thus, he completed only 4 months of the 12-month service requirement.

The finance officer has expressed concern as to the propriety of the claim since (1) Dr. Henry had already indicated an intent to retire at the time his transfer to Albany was authorized; (2) there is no evidence that Dr. Henry signed an employment agreement prior to his return to Albany; and (3) the information provided indicates that the re-transfer to Albany was at the request and primarily for the benefit of the employee. In spite of these concerns, the finance officer agrees that the total cost of Dr. Henry's two moves was less than the cost of per diem at Idaho Falls for the time he actually spent there. In addition, he points out that there was a benefit to the Government for Dr. Henry to continue work on the program in Albany rather than losing his services entirely.

The payment of travel, transportation, and relocation expenses of Federal civilian employees who are transferred in a change of official station is authorized by the provisions of 5 U.S.C. §§ 5724 et seq., as implemented by the Federal Travel Regulations, FPMR 101-7 (September 1981) incorp by ref., 41 C.F.R. § 101-7.003 (1985) (FTR). Travel, transportation, and relocation allowances may be paid only after the employee agrees in writing to remain in the Government service for 12 months after his transfer, unless separated for reasons beyond his control that are acceptable to the agency concerned. 5 U.S.C. § 5724(i). See also FTR para. 2-1.5a(1)(a). Inasmuch as the 12-month service requirement must be satisfied before relocation expenses are reimbursable, we have held that an employee is bound by the service obligation even if he does not execute a written agreement. Orville H. Myers, 57 Comp. Gen. 447 (1978).

This Office has also held that voluntary retirement may be considered as a reason for separation which is beyond the control of an employee, and, therefore, that such retirement prior to completion of the required 12-month service period is not a bar to reimbursement of relocation expenses. 46 Comp. Gen. 724 (1967). However, it is within the discretion of the head of the agency concerned to determine whether, under the particular circumstances, an employee's separation through voluntary retirement is an acceptable reason for releasing him from his service obligation. An agency's determination in this regard is not subject to question by this Office unless there is no reasonable basis for the determination. Federal Bureau of Investigation, 61 Comp. Gen. 361 (1982); Ralph W. Jeska, B-193456, December 28, 1978.

B-219813

We have also determined that an employee who is transferred solely for the purpose of voluntary retirement immediately after reporting to his new duty station may not be reimbursed any amount of the relocation expenses incurred where the purpose of the transfer was primarily for the convenience or benefit of the employee, notwithstanding that the ultimate return of the employee to his former duty station was contemplated at the time of the original transfer by the employing agency and the employee. 5 U.S.C. § 5724(h) (1982); 29 Comp. Gen. 255 (1949). Thus, the rule in 46 Comp. Gen. 724 - voluntary retirement prior to completion of the 12-month service period may be considered as a valid and acceptable reason for separation - applies only where the employee is transferred in good faith to a location at which he performs necessary and substantial duty prior to his voluntary retirement. James D. Belknap, B-188597, June 17, 1977. Such is the case here.

Dr. Henry was subject to the required 12-month service agreement, though not formally executed; however, his transfer back to Albany was not solely for the purpose of his voluntary retirement. His services were needed by the Bureau of Mines at Albany to assist in the training of a new Technical Project Officer, and to continue his work on the interagency agreement. Thus, at the request of the agency, Dr. Henry was transferred in good faith to Albany and he did, in fact, perform necessary and substantial duty at Albany for 4 months prior to his voluntary retirement. Therefore, we regard Dr. Henry's transfer as being in the interest of the Government. Further, we have been informed that Dr. Henry has been employed by the Bureau of Mines as a reemployed annuitant.

Since Dr. Henry's transfer was in the interest of the Government, the rule in 46 Comp. Gen. 424, supra, applies, and his voluntary retirement prior to completion of the 12-month service period may be considered as a valid reason for separation.

B-219813

Accordingly, Dr. Henry's travel and transportation expenses may be paid subject to a determination by the head of the agency that his separation was for reasons beyond his control, and acceptable to the agency.

*for*   
Comptroller General  
of the United States