



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Thomas D. Mulder - Relocation Expenses -
Inter-Agency Transfer
File: B-218645
Date: September 29, 1986

DIGEST

1. An employee involved in an inter-agency transfer in the interest of the government without a break in service, which also involved vested overseas return travel rights from Alaska, is entitled to relocation expenses under 5 U.S.C. §§ 5724 and 5724a. Milton J. Parsons, 58 Comp. Gen. 783 (1979), distinguished.
2. An employee transferred in the interest of the government was not issued travel orders. However, travel orders are not essential for relocation expense reimbursement. While the issuance of travel orders demonstrates an agency's intention to transfer an employee, the absence of such orders is not fatal to those relocation expense reimbursement rights if there is other objective evidence of that transfer intention. Orville H. Myers, 57 Comp. Gen. 447 (1978).
3. An employee transferred in the interest of the government did not execute a service agreement incident to that transfer. However, lack of such an agreement does not defeat relocation expense reimbursement. The statutory condition to payment of relocation expenses incident to such a transfer is that the employee remain in government service without a break in service for a minimum of 12 months following transfer. So long as that condition is met, relocation expenses may be paid. Baltazar A. Villarreal, B-214244, May 22, 1984. Time with a particular agency is not a condition precedent to relocation expense reimbursement. Finn v. United States, 102 Ct. Cl. 814 (1970).
4. Ordinarily, all relocation expense reimbursements under 5 U.S.C. §§ 5724 and 5724a associated with an inter-agency transfer are the sole responsibility of the gaining agency. 5 U.S.C. § 5724(e). However, where an employee also has vested return travel rights under 5 U.S.C. § 5722, these are

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to be paid by the losing agency so long as return travel is performed before the transfer is effected. Milton G. Parsons, 58 Comp.Gen. 783 (1979); 46 Comp. Gen. 628 (1968).

DECISION

This decision is in response to a request from the Director, Fiscal and Accounting Management, Forest Service, United States Department of Agriculture. It involves several questions concerning the entitlement of a Forest Service employee, Mr. Thomas D. Mulder, to be reimbursed for various relocation expenses incident to several inter-agency transfers. For the reasons stated hereafter, we conclude that Mr. Mulder is eligible for the full range of relocation expense payments under 5 U.S.C. §§ 5724 and 5724a. We also conclude that the Bonneville Power Administration (BPA), to which Mr. Mulder transferred upon return from service with the Interior Department in Alaska, is responsible for payment of Mr. Mulder's expenses under 5 U.S.C. §§ 5724 and 5724a. However, Interior remains liable for the portion of those expenses representing Mr. Mulder's return travel benefits under 5 U.S.C. § 5722.

BACKGROUND

Mr. Thomas D. Mulder was an employee of the Minerals Management Service (MMS), Department of the Interior, in 1983, stationed in Anchorage, Alaska. On December 2, 1983, he was offered and accepted a position with the Bureau of Land Management (BLM), Department of the Interior, in Salem, Oregon, to be effective December 11, 1983. At the time he accepted that position, he had completed his agreed upon tour of duty with MMS in Alaska and, thus, under the provisions of 5 U.S.C. § 5722(a)(2) (1982), was entitled to return travel benefits at the expense of MMS.

On December 6, 1983, prior to performing return travel, Mr. Mulder received a second job offer, this time from BPA, Department of Energy, for a position in Portland, Oregon. BPA informed him that payment of travel expenses and shipment of household goods was not authorized. Mr. Mulder, in turn, informed BPA of his acceptance of a job with BLM and that it carried with it transfer entitlement rights. According to Mr. Mulder, BPA then offered to at least match the transfer

benefit offer made by BLM. Mr. Mulder cancelled his acceptance of the BLM position, accepted the BPA position, and began to arrange his move to Portland, Oregon.

On December 9, 1983, Mr. Mulder left Anchorage, Alaska, and he arrived in Portland, Oregon, on December 15, 1983. He was terminated by MMS effective December 24, 1983, and appointed by BPA effective December 25, 1983. Since the Christmas legal holiday in 1983 was Monday, December 26, he first reported for duty at the BPA office in Portland on Tuesday, December 27. No travel authorization was issued to Mr. Mulder by either MMS or BPA. He was informed by BPA that a travel authorization would not be issued until his old agency, MMS, returned a Memorandum of Understanding to BPA regarding MMS's agreement to reimburse BPA 50 percent of the expenses incurred by BPA incident to his transfer. That Memorandum of Understanding, prepared by BPA, was agreed to by MMS and returned to BPA on December 30, 1983. It provided in part:

"1. Mr. Mulder will be entitled to all the normal expense reimbursements provided for Federal employees associated with permanent change of duty station."

On January 11, 1984, while in the employ of BPA, Mr. Mulder received an offer of a position from the Forest Service. Since he had yet to be reimbursed for the expenses incurred as a result of his transfer from Anchorage to Portland incident to his employment by BPA, he expressed concern to the Forest Service as to the effect his acceptance of their offer would have on his entitlement to expense reimbursement for his move from Anchorage to Portland. Based on the Forest Service's assurances that his acceptance and transfer to the Forest Service from BPA would not adversely affect his reimbursement rights, Mr. Mulder accepted the position. Effective January 22, 1984, he transferred to the Forest Service for duty in its Wind River Ranger District, Gifford Pinchot National Forest, Oregon.

There is considerable confusion as to what entitlements Mr. Mulder has as a result of the above transactions and which agency or agencies are responsible to pay Mr. Mulder's entitlements. Initially, BPA agreed to pay all Mr. Mulder's normal relocation expenses incident to his transfer to BPA and, upon payment of those expenses, to bill MMS for 50 percent of that cost. However, the submission points

out that, based on our decision Milton G. Parsons, 58 Comp. Gen. 783 (1979), MMS determined that its responsibility was limited to Mr. Mulder's return travel expenses to Portland, Oregon, but not the other expenses agreed to by BPA, such as real estate expenses, miscellaneous expenses, and temporary quarters subsistence expenses.

We also understand that, following Mr. Mulder's transfer from BPA to the Forest Service, BPA, in spite of its agreement to provide normal relocation expense reimbursement, has refused to reimburse Mr. Mulder for any of the expenses he incurred. The BPA's position is that, since Mr. Mulder was employed by it for such a short period of time, BPA should not have to incur expenses from which it did not derive any benefit by virtue of the transfer. Further, BPA asserts that since it did not appoint Mr. Mulder until after he arrived in Portland, all of his travel from Alaska to Portland constituted return travel, the expenses of which must be borne by MMS.

Because of the several inter-agency transfers involved, the lack of travel orders and an executed service agreement, as well as the perceived limitation imposed on Mr. Mulder's travel and relocation expense reimbursement rights by our decision in Parsons, above, the Forest Service is uncertain as to the extent of his travel and relocation expense rights and the agency or agencies which are responsible for that reimbursement. Based on that uncertainty, the Forest Service has requested our decision on these questions.

DECISION

The initial question concerns the extent of Mr. Mulder's relocation reimbursement rights in the first instance. The basic provisions of law governing transfer travel and relocation rights are contained in 5 U.S.C. §§ 5724 and 5724a (1982). Subsection (a) of section 5724 authorizes reimbursement of the travel expenses incurred by a government employee who is "transferred in the interest of the Government from one official duty station or agency to another for permanent duty," as well as the transportation expenses of his immediate family and movement of his household goods. Those employees who qualify for reimbursement under section 5724 also become entitled under 5 U.S.C. § 5724a to the payment of family per diem, temporary quarters subsistence expenses, house sale and purchase expenses, and other relocation expenses.

All expense reimbursement rights associated with relocation travel between duty stations where permanent duty is to be performed at the new duty station come within the purview of 5 U.S.C. §§ 5724 and 5724a. The only statutory limitations on those rights are that the transfer must be (1) in the interest of the government, and (2) without a break in service.^{1/} Further, if the transfer is between agencies, 5 U.S.C. § 5724(e) mandates that " * * * the agency to which * * * [an employee] transfers pays the expenses authorized by this section."

In contrast to the above, 5 U.S.C. § 5724(d) provides that when an employee is transferred to a post of duty outside the continental United States, his travel entitlements to that location and his return travel "shall be allowed to the same extent and with the same limitations prescribed for a new appointee under * * * [5 U.S.C. § 5722]." Section 5722 provides, in part:

"(a) Under such regulations as the President may prescribe * * * an agency may pay from its appropriations--

"(1) travel expenses of a new appointee and transportation expenses of his immediate family and his household goods and personal effects from the place of actual residence at the time of appointment to the place of employment outside the continental United States; and

"(2) these expenses on the return of an employee from his post of duty outside the continental United States to the place of his actual residence at the time of assignment to duty outside the United States."

^{1/} As it relates to real estate transaction expenses, 5 U.S.C. § 5724a(a)(4) requires that the old and new duty stations must be within the United States (including Alaska), its territories or possessions, the Commonwealth of Puerto Rico, or the Canal Zone.

It is clear that Mr. Mulder is entitled to return travel and transportation expenses under 5 U.S.C. § 5722 by virtue of his service with MMS in Alaska. The question is whether he is also entitled to the full range of relocation benefits under 5 U.S.C. §§ 5724 and 5724a. ^{2/} We conclude that he is so entitled.

In the present case, Mr. Mulder made an inter-agency transfer from Anchorage, Alaska, to Portland, Oregon. Since his transfer was in the interest of the government and occurred without a break in service, Mr. Mulder meets the statutory conditions for entitlement to the full range of relocation benefits in 5 U.S.C. §§ 5724 and 5724a. See Richard E. Whitmer, B-196002, March 18, 1980. We find no basis for distinguishing between the relocation rights of an employee who makes an inter-agency transfer where both posts of duty are in the continental United States and an inter-agency transfer involving a return from a post of duty in Hawaii or Alaska to a post of duty in the continental United States.

Contrary to BPA's suggestion, our decision in Milton G. Parsons, above, does not limit Mr. Mulder's relocation entitlements under 5 U.S.C. §§ 5724 and 5724a. Indeed, this decision deals only with the allocation of liability between a transferee and transferor agency for the payment of return travel and transportation expenses under 5 U.S.C. § 5722, discussed previously. Parsons applied the rule first established in 46 Comp. Gen. 628 (1968) and followed

^{2/} An employee's return travel expense reimbursement rights under 5 U.S.C. § 5722 are significantly more limited than those under 5 U.S.C. §§ 5724 and 5724a. While an employee is eligible under 5 U.S.C. §§ 5724 and 5724a for the full range of relocation expense reimbursements (including those payable under 5 U.S.C. § 5722), items such as family per diem, cost of househunting, subsistence while occupying temporary quarters, miscellaneous expense allowance, and residence sale and purchase expenses are not authorized under 5 U.S.C. § 5722. See FTR para. 2-1.5. See also Dr. Arnold Krochmal, B-213730, April 17, 1984.

in subsequent decisions ^{3/} that when a employee returns to the continental United States prior to transfer, the transferor (losing) agency must pay the employee's return travel expenses; however, when the transfer is effected before the employee's return to the continental United States, the transferee (gaining) agency is liable for such expenses. The Parsons line of decisions has no bearing on a transferred employee's entitlement to relocation benefits under 5 U.S.C. §§ 5724 and 5724a. Cf., William F. Krone, supra, at pages 5-6, which recognized that payment of relocation benefits under these authorities was a matter separate from the question of liability for return travel expenses under 5 U.S.C. § 5722.

The absence of travel orders and a signed service agreement does not defeat Mr. Mulder's entitlement to relocation expenses. We have held that, while travel orders are generally recognized as being the authorizing document upon which reimbursement of transfer expenses may be allowed, the absence of travel orders is not fatal if there is other objective evidence of an intent to transfer the employee. Orville H. Myers, 57 Comp. Gen. 447 (1978), and decisions cited; see also James F. Hansard, B-201732, June 30, 1981. In this case there is no question regarding the intent to transfer Mr. Mulder.

Likewise, we have held that the absence of a signed service agreement is not fatal to payment of relocation expenses where the employee in fact performs the required minimum service. Baltazar A. Villarreal, B-214244, May 22, 1984, and decisions cited. In this regard, time with a particular agency is not a condition precedent to relocation expense reimbursement. Finn v. United States, 192 Ct. Cl. 814 (1970). Thus, an employee need only remain in government service without a break in service for a minimum of 12 months following the transfer for which reimbursement is claimed. Mr. Mulder has performed well in excess of the required 1 year's minimum federal service following his transfer to BPA, most of it being with the Forest Service.

3/ See, in addition to Parsons, B-163364, June 27, 1968; 51 Comp Gen. 14 (1971); B-170639, July 29, 1971; and William F. Krone, B-213855, May 31, 1984.

Having concluded that Mr. Mulder is entitled to the full range of relocation benefits, the remaining question is which agency's appropriations are to be charged for these expenses?

The first sentence of 5 U.S.C. § 5724(e) provides:

"When an employee transfers from one agency to another, the agency to which he transfers pays the expenses authorized by this section. * * *"

This language clearly serves to place responsibility for reimbursement of employee relocation expenses upon the gaining agency. Therefore, since Mr. Mulder was transferred to BPA, that agency has the basic responsibility under 5 U.S.C. § 5724(e), as the gaining agency, to reimburse Mr. Mulder for the travel and relocation benefits attendant to his permanent change-of-station transfer. To the extent applicable, these benefits include travel and transportation for the employee and his family, their travel per diem, movement of household goods, real estate sales expenses, a miscellaneous expense allowance, and temporary quarters subsistence expenses. While Mr. Mulder spent only 4 weeks with BPA, such a brief period of service has no bearing upon BPA's payment obligation under the plain terms of section 5724(e).

As noted previously, however, under the rule applied in the Parsons line of decisions, MMS remains liable for that portion of Mr. Mulder's expenses which represent return travel and transportation benefits payable under 5 U.S.C. § 5722. This is because Mr. Mulder's transfer to BPA was effective after he returned from Alaska.


for Milton J. Duran
Comptroller General
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