

Pool



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Dwight Kimsey - Relocation Expenses - Back Pay Act
File: B-225289
Date: February 17, 1987

DIGEST

Employee of Office of Surface Mining Reclamation and Enforcement requests reimbursement for relocation expenses incurred to return to his former duty station after his reinstatement was directed by Merit Systems Protection Board. During the time he had been separated, he had relocated to accept other employment. Neither the Back Pay Act, 5 U.S.C. § 5596, which prescribes allowable payments when an employee undergoes an unwarranted personnel action, nor the regulations implementing section 5596, authorize consequential relocation and moving expenses when an employee is erroneously separated. Although such expenses may result from an improper personnel action, they do not represent benefits an employee would have received had the personnel action not occurred.

DECISION

Jed O. Christensen, Director, Office of Surface Mining Reclamation and Enforcement (OSMRE), Department of the Interior, requests an advance decision concerning whether Mr. Dwight Kimsey, an OSMRE employee, may be reimbursed for relocation expenses he incurred following a Merit Systems Protection Board (MSPB) decision directing his reemployment by that agency. We hold that neither the Back Pay Act, 5 U.S.C. § 5596 (1982), which prescribes allowable payments when an employee undergoes an unwarranted personnel action, nor the regulations implementing section 5596, authorize consequential relocation and moving expenses when an erroneously separated employee is reinstated. Although such expenses may result from an improper personnel action, they do not represent benefits an employee would have received had the personnel action not occurred.

BACKGROUND

Mr. Kimsey was separated from OSMRE by a reduction-in-force in January 1982, after he declined to transfer with his agency function from Denver, Colorado, to Albuquerque, New Mexico. Mr. Kimsey filed an appeal with the MSPB, which

determined that Mr. Kimsey's agency function had, in fact, not been transferred to Albuquerque, that Mr. Kimsey therefore had been erroneously separated, and that he was to be reinstated with OSMRE in Denver.

Between the time Mr. Kimsey was separated from OSMRE in January 1982 and the effective date of his reinstatement, Mr. Kimsey relocated from Denver to Cheyenne, Wyoming, to accept private employment. Following his reemployment with OSMRE in Denver pursuant to the MSPB final decision, Mr. Kimsey claimed reimbursement for the expenses he incurred in relocating back to Denver. The agency asks whether or not these relocation expenses may be added to the computation of the backpay award due to Mr. Kimsey as part of the implementation of the MSPB's order.

OPINION

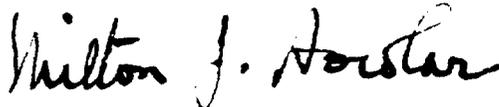
The Back Pay Act, 5 U.S.C. § 5596 (1982), provides, generally, that an employee who is found by an appropriate authority to have undergone an unjustified or unwarranted personnel action which results in the withdrawal or reduction of all or part of his pay, allowances, or differentials is entitled to receive an amount equal to the pay, allowances or differentials he normally would have received, less amounts earned by him elsewhere during the period.

Regulations implementing the Back Pay Act have been promulgated by the Office of Personnel Management in Title 5, Part 550, Subpart H, of the Code of Federal Regulations. These regulations provide that an agency shall compute for the period covered by the corrective action the pay, allowances, and differentials of the employee as if the unjustified or unwarranted personnel action had not occurred, but in no case will the employee be granted more pay, allowances, and differentials than he would have been entitled to if the unjustified or unwarranted personnel action had not occurred. 5 C.F.R. § 550.805 (1986).

Mr. Kimsey is not entitled to receive reimbursement for expenses he incurred in relocating back to Denver since there is no provision in the Back Pay Act or its implementing regulations for the payment of incidental expenses incurred by an employee as a consequence of an unjustified or unwarranted personnel action. It is clear that the Act authorizes only payment of an amount the employee would have received if the erroneous personnel action had not occurred.

Therefore, although the expenses for which Mr. Kimsey claims reimbursement may have been due to his erroneous separation and subsequent reinstatement, they are not allowances Mr. Kimsey would have received if he had not undergone the erroneous personnel action. Jack M. Haning, 63 Comp. Gen. 170 (1984).

Accordingly there is no legal basis upon which this Office can certify payment of relocation expenses in the circumstances of Mr. Kimsey's claim, and it is denied.

for 
Comptroller General
of the United States