

Percy - GLM



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Ronald DeFore - Relocation Expenses

File: B-227663

Date: October 23, 1987

DIGESTS

1. Where an agency issued travel orders allowing the payment of certain relocation allowances to a transferred employee, the agency is presumed to have made the determination that the transfer was in the interest of the Government. Unless the original orders were arbitrary, capricious or clearly erroneous, we will not overturn the agency's original determination that the transfer was made in the interest of the Government.
2. A transferred employee of the Peace Corps, was authorized transportation expenses, temporary lodging expenses, shipment of household effects and temporary storage, but he was not authorized real estate expenses. He is entitled to reimbursement of real expenses in accordance with part 6, chapter 2, of the Federal Travel Regulations since he was transferred in the interest of the Government and the regulations contemplate that certain expenses will be uniformly allowed to all transferred employees. Budgetary constraints are not an acceptable reason for denying certain relocation expenses to a transferred employee.
3. An employee placed his residence at his old duty station on the market for sale before he received official notice of transfer. However, the employee did not accept an offer to purchase his residence until after official notice of transfer. Therefore, on the date of official notice of transfer, the employee held title to and lived in his residence. The sale of the employee's residence at his old duty station was incident to his transfer, and the employee may be reimbursed for these real estate expenses.

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DECISION

This decision is in response to a request from the Peach Corps. The question is whether an employee, Mr. Ronald H. DeFore, may be reimbursed for relocation expenses incurred incident to his transfer from Van Nuys, California, to Washington, D.C. For the reasons hereafter stated, we hold that Mr. DeFore's claim may be allowed.

BACKGROUND

Mr. DeFore was employed as Area Manager for Peace Corps Area Office in Los Angeles, California. He resided in Van Nuys, California, and on April 11, 1984, he placed his residence on the market for sale. Shortly thereafter, Mr. DeFore was detailed to work in the Peace Corps Headquarters Office of Marketing, Recruitment, Placement, and Staging in Washington, D.C., from April 22 to May 4, 1984. While he was in Washington, D.C., he learned that the position of Press Officer would soon be available, and he asked the Director of Public Affairs, Mr. Hugh O'Neill to consider him for the position. On April 26, 1984, Mr. DeFore rejected an offer to buy his residence because, according to Mr. DeFore, he had not been offered the position in Washington, D.C. However, on May 10, 1984, Mr. DeFore was offered and accepted the position in Washington, D.C., and a few days later on May 13, 1984, Mr. DeFore accepted an offer to buy his residence. At the time he was offered the position in Washington, D.C., Mr. DeFore asked whether the agency would pay his relocation expenses, and Mr. O'Neill stated that the agency would pay the relocation expenses. Settlement of the sale of Mr. DeFore's residence occurred on July 12, 1984.

Mr. O'Neill later asked Mr. DeFore for an estimate of his relocation expenses, and Mr. DeFore estimated that they would be approximately \$18,000. Mr. O'Neill told Mr. DeFore that the Office of Public Affairs could not afford to pay that amount of expenses and offered to pay relocation costs excluding the real estate transaction expenses. Mr. DeFore accepted this offer. An authorization of Official Travel was issued on May 30, 1984, and specified that allowable relocation expenses were limited to transportation expenses

for Mr. and Mrs. DeFore, temporary lodging not to exceed 30 days, shipment of household effects and temporary storage not to exceed 60 days.

Mr. DeFore is now claiming reimbursement for real estate expenses incurred incident to the sale of his former residence and the purchase of a new residence at his new duty station. The agency has requested that it be advised whether the transfer is considered to have been in the interest of the Government and what expenses are allowable incident to the transfer.

OPINION

Transfer in Interest of Government or Employee

The authority for the payment of relocation expenses to Peace Corps employees for transfers within the United States is contained in the Peace Corps Manual, Section 812, and Volume 6 of the Foreign Affairs Manual, Section 148, which refers to the authority for the reimbursement of travel and relocation expenses upon an employee's change of station under 5 U.S.C. §§ 5724, 5724a (1982) and the implementing regulations, Federal Travel Regulations (FTR), incorp. by ref., 41 C.F.R. § 101-7.003 (1983). The reimbursement of relocation expenses is subject to a determination by the head of the agency or by a designated official that the transfer is in the interest of the Government and is not primarily for the convenience or benefit of the employee or at his request. It is within the authority of the agency to determine whether a transfer is in the interest of the Government or whether it is primarily for the convenience or benefit of the employee or at his request, and we will not overturn the agency's determination unless it is arbitrary, capricious or clearly erroneous under the facts of the case. James C. Jackson, Jr., B-210739, June 7, 1983.

In Steve W. Frederick, B-217630, July 25, 1985, we considered the case of an Internal Revenue Service employee in Houston, Texas, who applied for consideration to any Government position in New Orleans or Baton Rouge, Louisiana. The Defense Contract Audit Agency (DCAA)

selected Mr. Frederick for a position in the New Orleans Branch Office, and the agency's appointment letter authorized a payment for miscellaneous relocation allowance of \$200, shipment of household goods, mileage and per diem but not for real estate expenses. Mr. Frederick later filed a claim for real estate expenses, and upon review the agency concluded that the authorization of any relocation allowances had been erroneous since Mr. Frederick's transfer was considered to have been in his interest and not in the Government's interest. We held in Frederick that the employee was entitled to retain the authorized relocation allowances because the legal rights and liabilities in regard to these relocation allowances vested when the travel was performed under orders and those orders may not be canceled or modified retroactively to increase or decrease the rights which have become fixed under applicable statutes and regulations. We stated in Frederick that exceptions have been recognized where modifications are made within a reasonable time after the issuance of the basic orders to correct an error apparent on the fact 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. We also stated that where a transfer had been determined by an agency to be in the Government's interest, the fact that the transfer also benefits the employee does not preclude allowance of otherwise proper expenses. See Frederick, cited above; Elender C. Hill, B-222905, March 30, 1987.

In the case before us, Mr. DeFore was informed that the agency would pay his relocation expenses. Mr. DeFore later agreed to assume his real estate expenses and have the agency pay for all other relocation costs, and the agency issued an Authorization of Official Travel which specified those relocation expenses which would be paid. In issuing this order and allowing for certain relocation expenses, the agency is presumed to have made a determination that the transfer was in the Government's interest; otherwise, relocation expenses could not have been allowed and a written travel authorization could not have been issued. FTR para. 2-1.3(c). Therefore, we conclude that

Mr. DeFore's transfer was made in the interest of the Government.

Real Estate Transaction Expenses

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 of FTR. We have held that an employee's claim for relocation expenses is not proper where the transfer was solely for the employee's benefit and not in the interest of the Government. James L. Skolant, B-213807, May 10, 1984. However, since we have determined in Mr. DeFore's case that the transfer was made in the interest of the Government, that is no longer an issue. The two remaining questions are whether an agency can reimburse the employee for some relocation expenses while denying reimbursement of others and whether Mr. DeFore's real estate expenses were incident to his transfer to Washington, D.C.

An agency has a certain amount of discretion with regard to the allowance of certain relocation expenses such as authorization of a house-hunting trip or subsistence expenses while occupying temporary quarters. However, we have held that the regulations contemplate that certain allowances will be allowed uniformly to transferred employees. 55 Comp. Gen. 613, 614 (1976). The real estate transaction expenses authorized in part 6 of chapter 2 of FTR fall into this category, and the agency has no discretion to reduce or change the benefits provided for in the regulations. Frederick, cited above. We have previously pointed out that budgetary constraints are not an acceptable reason for denying relocation expenses to a transferred employee. David C. Goodyear, 56 Comp. Gen. 709 (1977).

The remaining issue is whether the real estate transaction costs claimed by Mr. DeFore for the sale of his residence in California were incurred incident to his transfer to Washington, D.C. As noted above, Mr. DeFore placed his house on the market for sale before he applied for and was accepted for the position in Washington, D.C. The applicable regulations impose a requirement that the

residence for which selling expenses are claimed must be the employee's residence at the time he is first definitely informed by competent authority of his transfer to the new official station. FTR para. 2-6.1d..

Our decisions have held that where an employee incurs real estate expenses in anticipation of a transfer, these expenses may not be paid absent administrative intent to transfer the employee which was clearly evident at the time the real estate expenses were incurred. James K. Marron, 63 Comp. Gen. 298 (1984); George S. McGowan, B-206246, August 29, 1984; Alan L. Olson, B-206239, April 26, 1982. However, each of the cases involved situations where the employee signed a contract to sell his residence or completed settlement on the sale of his residence prior to being definitely informed by competent authority of his transfer to a new duty station.

In the present case, we note that Mr. DeFore had listed his residence with a real estate agent, but he did not accept a purchase offer or go to settlement on his residence (and thereby incur real estate expenses) until after he had accepted the job offer in Washington, D.C. Therefore, we conclude that Mr. DeFore satisfied the requirements of the regulations and our decisions since he occupied this residence and had not incurred any real estate expenses at the time he was first definitely informed of his transfer.

Accordingly, Mr. DeFore's claim for real estate expenses pertaining to the sale of his residence at this old duty station and purchase of a residence at his new duty station may be allowed for reimbursement.

for 
Comptroller General
of the United States