



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Jennifer L. Johnson - Relocation Expenses - Breach
of Service Agreement
File: B-230338
Date: June 21, 1988

DIGEST

An employee of the Department of Agriculture (USDA), who resigned from her position within 12 months of a transfer, is obligated to repay the government the amount paid by the government in connection with her transfer. Her separation was not for reasons beyond the employee's control and acceptable to USDA as provided in 5 U.S.C. § 5724(i) (1982). The assessment of interest or other appropriate charges on this debt is governed by 31 U.S.C. § 3717 (1982) and 4 C.F.R. § 102.13 (1988).

DECISION

The issue in this decision is whether an employee of the Department of Agriculture (USDA) who resigned from her position within 12 months of a transfer is obligated to repay the government the amount paid for relocation expenses. We hold that the employee is so obligated for the reasons set forth below.

BACKGROUND

Ms. Jennifer L. Johnson, formerly an employee of the USDA, has appealed the determination of our Claims Group, Z-2861011, September 2, 1987, that she is indebted to the United States for the amount paid by the government in connection with her transfer from Sioux Falls, South Dakota, to Des Moines, Iowa. The record shows that after completing a training period during which mobility agreements were explained to her, the USDA assigned Ms. Johnson to a position as a Market News Reporter in Sioux Falls, South Dakota, on August 5, 1984. Due to the needs of the USDA, Ms. Johnson was subsequently informed that she was going to be transferred to Des Moines, Iowa. On March 8, 1985, she signed a 12-month service agreement in connection with the USDA's authorization to reimburse her relocation expenses. That agreement provided that Ms. Johnson agreed to remain in

government service for a period of 12 months following the effective date of her transfer unless she was separated for reasons beyond her control and acceptable to the USDA. In addition, the service agreement provided that if she did not remain in the government service for the 12-month period, Ms. Johnson would repay to the government "all moneys expended by the United States on account of travel, transportation, and allowances connected with the transfer." She further acknowledged that all such monies would then be recoverable from her as a debt due to the United States.

Ms. Johnson reported for duty at her new duty station in Des Moines, Iowa, on April 4, 1985. Despite being counseled that she would be responsible for repayment of her relocation expenses, she resigned on February 7, 1986, after completing only 10 months of service in Des Moines, Iowa. The agency has demanded repayment of her relocation expenses.

OPINION

The payment of travel, transportation, and relocation expenses of federal civilian employees who are transferred in a change of official station is authorized by 5 U.S.C. §§ 5721-5734 (Supp. III 1985). These expenses may be paid only after the employee agrees in writing to remain in the government service for 12 months after the transfer, unless separated for reasons beyond his or her control that are acceptable to the agency concerned. See 5 U.S.C. § 5724(i) (Supp. III 1985) and the implementing regulation, Federal Travel Regulations (FTR) para. 2-1.5a(1)(a).^{1/} The statute and the regulation also provide that if the employee violates the agreement, the money spent by the United States for the expenses and allowances is recoverable from the employee as a debt due the United States.

We have held that the employing agency is primarily responsible for determining whether an employee's separation from service was for a reason that was beyond the employee's control and acceptable to the agency. In the absence of clear and convincing evidence that the agency's decision was arbitrary or capricious, we will not substitute our judgment for that of agency officials who are in a better position to investigate and resolve the matter. See John T. Phillips, B-219473, Mar. 12, 1986, and cases cited therein.

^{1/} Supp. 4, Aug. 23, 1982, incorp. by ref., 41 C.F.R. § 101-7.003 (1985).

In the present case, the USDA determined that Ms. Johnson's separation from government service was due to her desire to live elsewhere and to take a job in the private sector. Thus, the agency found her separation was for reasons that were not beyond her control and were not acceptable to the USDA. On the basis of the record before us, we cannot say that this determination by the USDA was arbitrary or capricious. Thus, since Ms. Johnson violated her 12-month government service agreement by voluntarily leaving the USDA after only 10 months of service in Des Moines, Iowa, she is obligated to repay the government the amount paid by the government in connection with her transfer.

Ms. Johnson questions the assessment of interest on her claim, and she asks whether the claim may be compromised, waived, or prorated based on her period of service under the agreement.

With regard to the payment of interest on this indebtedness, we note that 31 U.S.C. § 3717 (1982) sets forth the notification and other requirements concerning interest and other penalty charges. See also the implementing regulations in 4 C.F.R. § 102.13 (1988). The standards for compromise and for suspension or termination of collection action on debts owed to the United States are set forth in 4 C.F.R. Parts 103, 104 (1988).

With regard to waiver, there is no basis to consider this indebtedness under the waiver authority contained in 5 U.S.C. § 5584 (Supp. III 1985). The indebtedness did not result from an erroneous payment of travel, transportation, or relocation expenses; rather, it arose from the employee's breach of her service agreement.

Finally, with regard to prorating the indebtedness, we have held that an employee who leaves government service prior to completing a 12-month service agreement is liable for the full amount of transfer costs as there is no authority under 5 U.S.C. § 5724(i) (Supp. III 1985) for prorating the amount based on time served after the transfer. See Terrance R. Lejcher, B-181999, Dec. 4, 1974.

Accordingly, it is our conclusion that Ms. Johnson is liable to repay the government the amounts expended for her relocation expenses.

for 
Comptroller General
of the United States