



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Gerald M. Anderson - Relocation Expenses -  
Change of Official Station - Reconsideration

**File:** B-238920.2

**Date:** August 5, 1991

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### DIGEST

An employee of the Social Security Administration requests reconsideration of a prior decision holding him liable for the relocation expenses his agency paid to a government relocation services contractor on his behalf. The employee maintains that he should not be held liable for the relocation expenses because his agency agreed to pay those expenses under a settlement agreement entered into with him in consideration of his withdrawal of a Merit Systems Protection Board appeal of an adverse action. However, the settlement agreement also stated that current standard change of station rules will apply. Under these rules, the agency determined that his relocation of residence was not incident to the change of official station. We will not upset the agency's determination where it is not incompatible with the terms of the settlement agreement, and the agency acted within its broad discretion. Upon reconsideration, Gerald M. Anderson, B-238920, Sept. 20, 1990, is affirmed.

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### DECISION

Mr. Gerald M. Anderson, an employee of the Social Security Administration, requests reconsideration of our decision, Gerald M. Anderson, B-238920, Sept. 20, 1990, in which we determined that he is liable for the relocation expenses his agency paid to a government relocation services contractor on his behalf incident to a permanent change-of-station transfer. For the reasons set forth below, the holding in that decision is affirmed.

On July 23, 1986, Mr. Anderson and the Social Security Administration (SSA) entered into a settlement agreement which resulted in Mr. Anderson withdrawing an appeal he then had before the Merit Systems Protection Board. As part of the settlement, SSA agreed to a paid change of station for Mr. Anderson from Olympia, Washington, to Aberdeen, Washington. The agreement stated that current standard change of station rules would apply to Mr. Anderson's move. The SSA additionally agreed to waive repayment of moving costs, which included purchase of Mr. Anderson's residence, if

"early" out became available to Mr. Anderson during the first year following his transfer.<sup>1/</sup> Pursuant to this agreement, Mr. Anderson was transferred from Olympia to Aberdeen. The travel order authorized relocation services to be provided by a relocation services contractor, including the purchase of Mr. Anderson's home in Olympia and assistance in locating a new residence in Aberdeen. Mr. Anderson accepted the relocation services contractor's offer to purchase his residence in Olympia, but did not use the service to relocate to Aberdeen. Instead, he and his family relocated to a second house he owned in Olympia which he had been renting out. The SSA paid the relocation services contractor \$24,093 in expenses incurred in its purchase of Mr. Anderson's first Olympia residence and the shipment and storage of his household goods. It is the recovery of this payment for which Mr. Anderson requests reconsideration.

In our prior decision, we found that the agency's determination and the consequent denial of Mr. Anderson's relocation expenses was not erroneous, arbitrary or an abuse of discretion under the applicable law and regulations.<sup>2/</sup> Upon appeal, Mr. Anderson's main contention is that the agency waived the broad discretion that it normally has to make a determination that his move of residence was not incident to the change of station when it entered into the settlement agreement. Mr. Anderson points out that he entered into the settlement agreement with the understanding that he would withdraw his Merit System Protection Board appeal and the agency would, as provided in paragraph 5 of the agreement, "waive the repayment of moving costs, which include purchase of Mr. Anderson's residence, if 'early' out becomes available to [him] during the first year following his transfer." Mr. Anderson's contention is that this settlement agreement should preclude SSA from making a subsequent determination that his relocation was not incident to the change in official duty station.

In response to Mr. Anderson's argument, we note that paragraph 3 of the settlement agreement further provided that "Current standard change of station rules" would apply to his move. The standard applicable to all cases involving claims for expenses incurred in an employee's relocation of residence is that it must be "incident to the change of official station." Harvey Knowles, 58 Comp. Gen. 319 at 320 (1979).

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<sup>1/</sup> This refers to a discontinued service retirement under 5 U.S.C. § 8336(d) (1988).

<sup>2/</sup> The circumstances upon which the agency based its determination were set forth in our earlier decision, Gerald M. Anderson, B-238920, Sept. 20, 1990, and need not be repeated here.

The fact that an employee's change of station is in the interest of the government does not necessarily make the relocation of his residence incident to the change of station. Therefore, the agency's determination that Mr. Anderson's relocation was not incident to his change of official station is compatible with the terms of the settlement agreement. This determination is for the agency to make in the first instance, and the agency has broad discretion in making it. See John W. Lacey, 67 Comp. Gen. 336 (1988), and Luella S. Howard, 51 Comp. Gen. 187 (1971). We will not overturn the agency's determination in the absence of a showing that it was clearly erroneous, arbitrary, or capricious. John W. Lacey, 67 Comp. Gen. 336, supra. Although a contrary determination by the agency might also have been sustainable under these facts and circumstances, we cannot say that the agency's determination and the consequent denial of Mr. Anderson's relocation expenses was erroneous, arbitrary, or an abuse of discretion.

Mr. Anderson further notes that the Regional Director of Finance, of the Department of Health and Human Services (HHS) determined that his relocation was not incident to his change in official duty station. The Regional Director was not an official of SSA, the agency which entered into the settlement agreement providing for the payment of these expenses. Mr. Anderson points out that in a letter to our Office dated April 13, 1990, the Director of the Division of Finance, SSA stated that "if possible within the parameters of the Federal Travel Regulations, SSA would like to fully reimburse Mr. Anderson for all his relocation expense."

In this regard, we note that the Social Security Administration is a constituent agency of the Department of Health and Human Services. Therefore, appropriate HHS officials such as the Regional Director of Finance have oversight responsibilities for expenditures of the Social Security Administration and the authority to make determinations on such as the one at issue.<sup>3/</sup>

Accordingly, we affirm our holding that Mr. Anderson is liable for the relocation expenses paid by the agency.

  
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<sup>3/</sup> See Reorganization Plan No. 1 of 1953, effective Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631, Title 5, United States Code, Appendix.