



Comptroller General
of the United States

Washington, D.C. 20548

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Decision

Matter of: Charles W. Walsh

File: B-254371

Date: February 2, 1994

DIGEST

An employee who is entitled to return transportation and related expenses under 5 U.S.C. §§ 5722 and 5724(d) (1988), is not entitled to real estate and related expenses which are authorized only under the separate statutory provisions of 5 U.S.C. §§ 5724 and 5724a (1988).

DECISION

The Department of Veterans Affairs requests an advance decision as to whether Mr. Charles W. Walsh, a biomedical engineering technician, is entitled to reimbursement of real estate and related expenses due to the transfer of his official duty station from Anchorage, Alaska, to Seattle, Washington, in circumstances further explained below.¹ For the following reason, we find that he is not so entitled, but he is entitled to be reimbursed for his return transportation and related expenses.

Mr. Walsh was originally an employee of, and was transferred by, the Department of Health and Human Services (HHS) in the interest of the government from Seattle, Washington, to Anchorage, Alaska, on September 14, 1990. Mr. Walsh was authorized and reimbursed for his real estate and related expenses under the provisions of 5 U.S.C. §§ 5724 and 5724a (1988), when he transferred to Alaska in 1990 since his transfer was in the interest of the government.

In connection with that transfer to a post of duty outside the continental United States, he signed an agreement with HHS to stay in government service for 24 months from the date he reported for duty making him eligible only for return transportation and related expenses to his place of residence upon separation from his post of duty. See

¹This request was submitted by Mr. Harlan R. Hively, Director, Finance Center Department of Veterans Affairs, Austin, Texas. Reference (104/00).

5 U.S.C. §§ 5722 and 5724(d) (1988). Mr. Walsh thus had what are commonly referred to as limited overseas return rights. On July 12, 1991, Mr. Walsh transferred to the Department of Veterans Affairs, in Anchorage, Alaska, which agreed to assume the remaining months on his 24-month agreement with HHS. Mr. Walsh fulfilled this agreement, and the Department of Veterans Affairs agrees that he is entitled to return transportation and related expenses.

Subsequently, Mr. Walsh decided to accept another position in the Seattle, Washington, Office of the Department of Veterans Affairs. On November 10, 1992, Mr. Walsh signed a statement on VA Form 5-3918 which acknowledged that his impending transfer from the Anchorage, Alaska, Office to the Seattle, Washington, Office of the Department of Veterans Affairs was for his own convenience and thus was not in the interest of the government. Mr. Walsh reported for duty in the Seattle, Washington, Office on January 12, 1993.

In connection with this final transfer, however, a Department of Veterans Affairs Personnel Management Specialist erroneously assured Mr. Walsh at the time he signed the VA Form 5-3918 on November 10, 1992, that he would be entitled to the broader reimbursements of real estate and related expenses allowable under 5 U.S.C. §§ 5724 and 5724a (1988). Those broader reimbursements for return travel from outside the continental United States are limited to transfers in the interest of the government. Since Mr. Walsh's final transfer was not in the interest of the government, he was only entitled to the more limited overseas return rights reimbursements for return transportation to his place of residence upon fulfilling his original 24-month agreement and separation from his position under 5 U.S.C. §§ 5722 and 5724(d) (1988).

The Department of Veterans Affairs has also determined that Mr. Walsh's final transfer on January 12, 1993, was not in the interest of the government. However, in connection therewith Mr. Walsh was issued travel orders and at least three amendments thereto by the Department of Veterans Affairs which are somewhat inconsistent. The Department of Veterans Affairs requests our decision on Mr. Walsh's legal entitlements, if any, under the circumstances just set forth.

When an employee transfers to a post of duty outside the continental United States, his transportation and related expenses to and from the post are allowed to the same extent and with the same limitations as prescribed for a new appointee under the provisions of 5 U.S.C. § 5722 (1988).

See, 5 U.S.C. § 5724(d) (1988).² These provisions are limited, however, to travel expenses for the employee and transportation expenses of his immediate family and his household goods from the place of actual residence and for their return. They do not permit the reimbursement of relocation expenses such as real estate expenses, temporary quarters subsistence expenses, or miscellaneous moving expenses. Those expenses are authorized only under the separate statutory provisions of 5 U.S.C. §§ 5724 and 5724a (1988).

Thus, the fact that Mr. Walsh was authorized reimbursement for real estate and related expenses upon his transfer to Alaska in 1990 does not automatically entitle him to reimbursement for such expenses upon his return to the continental United States. See, Philip M. Napier, B-216938, Jan. 3, 1985. The authority to pay transportation and related expenses under 5 U.S.C. § 5722 (1988) to employees transferring to posts of duty outside of the continental United States is distinct from the authority to pay real estate and related expenses under 5 U.S.C. § 5724a (1988). 54 Comp. Gen. 991 (1975); B.L. Gordon, B-204467, June 8, 1982.

In regard to Mr. Walsh's final transfer from the Anchorage, Alaska, Office to the Seattle, Washington, Office of the Department of Veterans Affairs on January 12, 1993, we note that the Department of Veterans Affairs has determined, and Mr. Walsh has acknowledged, that this transfer was not in the interest of the government. Thus, Mr. Walsh is not entitled to reimbursement of real estate and related expenses under 5 U.S.C. §§ 5724 and 5724a (1988), which inter alia, require that the transfer be in the interest of the government as a specific condition precedent to the applicability of these statutory provisions. See, Ronald G. West, 70 Comp. Gen. 733 (1991); Thomas D. Mulder, 65 Comp. Gen. 900 (1986).

Since Mr. Walsh was not transferred in the interest of the government from Alaska to Seattle on January 12, 1993, he is legally entitled to receive reimbursement only under 5 U.S.C. §§ 5722 and 5724(d) (1988).³ A person in Mr. Walsh's circumstances who is only entitled to return transportation and related expenses back to the continental

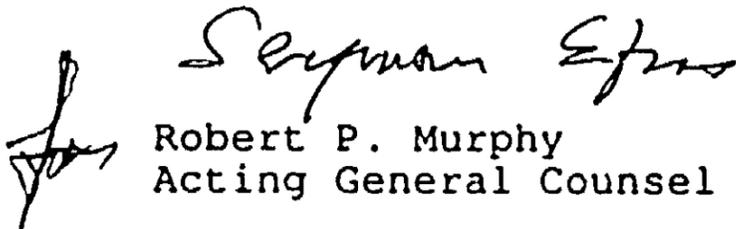
²For this limited purpose, Alaska is considered to be outside the continental United States. 5 U.S.C. § 5721(3) (1988).

³These statutory provisions are implemented by allowing the seven types of transportation and related expenses enumerated in 41 C.F.R. § 302-1.12(b)(2)(i) through (vii) (1993).

United States under 5 U.S.C. §§ 5722 and 5724(d) (1988), is not thereby automatically entitled to real estate and related expenses under the separate statutory provisions of 5 U.S.C. §§ 5724 and 5724a (1988), as the decisions, cited above, demonstrate.⁴

We regret that Mr. Walsh may have been misled as to his entitlements. However, payments of money from the federal treasury are limited to those authorized by statute, and even erroneous advice or information given by a government employee to a claimant cannot stop the government from denying benefits not otherwise permitted by law. Office of Personnel Management v. Richmond, 110 S.Ct. 2465 (1990), and cases cited therein. See, also, Riva Fralick, 64 Comp. Gen. 472 (1985).⁵

Accordingly, Mr. Walsh should only be reimbursed for his transportation and related expenses as statutorily authorized by 5 U.S.C. §§ 5722 and 5724(d) (1988).


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⁴These statutory provisions are implemented by allowing the six types of real estate and related expenses enumerated in 41 C.F.R. § 302-1.12(b)(3) (1993).

⁵Since Mr. Walsh knew that his transfer on January 12, 1993, was for his own convenience and not in the interest of the government, we do not believe that any further treatment of his claim under the Meritorious Claims Act, 31 U.S.C. § 3702(d) (1988), as Mr. Walsh requested, is appropriate. See, Terrill W. Ramsey, B-246004, Mar. 23, 1992.