

DECISION**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548**

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FILE:

DATE:

JUL 14 1976

B-166909

MATTER OF:

Frank Finch - House-hunting trip - Cancellation
of transfer

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DIGEST:

Although sections 2-4.3a and 2-1.5a(1)(a) of the Federal Travel Regulations require that an employee complete his transfer to receive travel and transportation benefits after accepting a transfer and making a trip to the new station for the purpose of finding permanent quarters, adherence to this requirement is not necessary where the agency determines that the cancellation of the transfer was in the best interest of the Government and the employee remains in Government service for 12 months following the cancellation date of transfer.

This matter is before us based upon a request dated March 2, 1976, from the Finance and Accounting Officer of the North Central Division, Corps of Engineers, Department of the Army, for a decision whether a claim may be paid for relocation expenses incurred by Mr. Frank Finch while on a house-hunting trip incident to a proposed change of station from Chicago, Illinois, to Buffalo, New York, pursuant to Travel Order No. 1342 FY75, dated May 1, 1975.

On April 28, 1975, Mr. Finch, who was employed by the North Central Division, Corps of Engineers, as a Civil Engineer, accepted a similar position at a higher grade with the Buffalo District with a reporting date of June 1, 1975. The Buffalo District issued travel orders on April 30, 1975, authorizing the permanent change of station. Pursuant to these orders, Mr. Finch and his wife made a house-hunting trip to Buffalo on May 7-8, 1975, during which he incurred the expenses which are the subject of this claim. On May 19, 1975, the District Engineer, North Central Division, requested that Mr. Finch consider declining the Buffalo District offer since it was felt that he was the best qualified internal candidate available for the vacant position of Chief, Flood Plain Management Services Unit. The District Engineer advised that although no firm commitment could be made at that time, past experience in filling vacant engineer positions within the

District would indicate that Mr. Finch would be one of the best qualified candidates referred for consideration. Mr. Finch declined the Buffalo District position on this date to take his chances on referral and selection for the Chicago District vacancy. Mr. Finch was selected for this position on June 19, 1975. The District Engineer stated further that he considered Mr. Finch's declination of the Buffalo District offer was in the best interest of the Chicago District. The position he accepted in the Chicago District was definitely in the hard-to-fill category and critical to the accomplishment of the mission of the Chicago District.

Section 2-4.3(a) of the Federal Travel Regulations (FPMR 101-7) (May 1973) provides as follows:

"a. After employee's agreement to transfer. A trip for finding residence quarters shall not be permitted at Government expense until after an employee has agreed to the transfer and the date of the transfer has been established, and shall not be authorized under circumstances where a purpose of the trip is to permit the employee to decide whether he will accept the transfer. If an employee accepts a transfer and, after making a trip to the new station for the purpose of finding permanent quarters or after the spouse has made such a trip, declines the transfer, he is subject to the provisions of 2-1.5a(1) concerning recovery of amounts reimbursed for travel."

As required by 5 U.S.C. § 5724(i) (1970) and the FTRs (cited above), the employee signed an agreement to remain in the Government service for 12 months after his transfer unless separated for reasons beyond his control and acceptable to the agency concerned. The provisions of 5 U.S.C. § 5724(i) are as follows:

"(i) An agency may pay travel and transportation expenses (including storage of household goods and personal

effects) and other relocation allowances under this section and sections 5724a and 5726(c) of this title when an employee is transferred within the continental United States only after the employee agrees in writing to remain in the Government service for 12 months after his transfer, unless separated for reasons beyond his control that are acceptable to the agency concerned. 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."

In 54 Comp. Gen. 71 (1974), a case involving relocation expenses incurred prior to cancellation of a proposed transfer, we stated the following:

"Service Agreements executed pursuant to statutory authority such as here involved are not contracts in the technical sense. See Denning v. United States, 132 Ct. Cl. 369 (1955). In the case of Finn v. United States, 192 Ct. Cl. 814 (1970), the court characterized the nature of the obligation of the employee created under a Service Agreement executed pursuant to 5724(i) as a 'contractual obligation' but pointed out that execution of the Service Agreement is a condition precedent to payment of relocation expenses. In B-173595, June 27, 1973, we recognized that an employee is bound by the 12-month service obligation as a condition to payment of relocation expenses even though he did not execute a Service Agreement. Absent the execution of a Service Agreement or the actual satisfaction

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of the 12-month service obligation there is no authority for an employee to receive or retain relocation expense reimbursement."

We have held that the authority of 5 U.S.C. § 5724(1) to pay relocation expenses extends to payment of expenses incurred in complying with a change-of-station order prior to the cancellation as well as payment of expenses incurred in connection with a consummated transfer. With respect to canceled transfer expenses, we regard the employee to be in the same position he would have been if the transfer had been consummated and he had been transferred back to his former station. 54 Comp. Gen. 71, supra.

Although sections 2-4.3a and 2-1.5a(1)(a) of the FTRs require that the employee complete his transfer to receive travel and transportation benefits, we do not believe adherence to this requirement is necessary where, as here, the agency determines that cancellation of the transfer was in the best interest of the Government and the employee remains in the Government service for 12 months.

Accordingly, the voucher may be paid if otherwise correct.

Comptroller General
of the United States