DECISION

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

Decision 52 Comp Gen 8 modified

FILE: B-183437

DATE: MAY 30 1975

97249

MATTER OF: **James Jacobsen - payment of relocation expenses prior to actual transfer**

DIGEST:

1. Employee who has incurred reimbursable relocation expenses in accordance with travel orders prior to effective date of transfer has sufficiently complied with statutory and regulatory requirements to permit payment of such expenses prior to actual transfer in certain circumstances. Since such payments may be recoverable if transfer is not effected, the Government's interests are reasonably protected by recovery procedures.

2. Proper means for agency to provide lead time for employee to prepare for transfer is to issue travel order authorizing reimbursement for relocation expenses. Where agency advises employee of transfer but does not or cannot issue travel order at that time, agency should not encourage employee to incur relocation expenses in anticipation of transfer and has duty to advise employee that he cannot be assured that he will be reimbursed for such expenses unless or until a subsequent travel order is issued and that he cannot be reimbursed for particular relocation expenses at all if incurred in anticipation of transfer, but before travel orders are issued.

This decision involves the propriety of the Department of Health, Education, and Welfare (HEW) certifying for payment, prior to the effective date of the transfer, a voucher submitted by Mr. James Jacobsen, an employee of the Western Program Center, Social Security Administration (SSA), San Francisco, California, representing relocation expenses incurred by him in connection with the transfer.

For a number of years the SSA had been seeking a site in the San Francisco Bay Area on which to build a new facility for its Western Program Center. Employees of the Center were kept informed of the progress in relocating the Center through a publication issued by the Center. On December 7, 1972, the head of the Center notified

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the employees through that publication that the General Services Administration had named Richmond, California, as the site for the construction of the Center and that construction was expected to start the next March and to be completed in 2 years. Reimbursement of Center employees for relocation expenses incurred by them in connection with the move to Richmond was discussed in later issues of that publication and in a special travel guide issued by the Center. The travel guide states that the announcement on December 7, 1972, constituted the date of official notification of the employees of the transfer for the purpose of their eligibility for reimbursement for relocation expenses.

Although the new Center will not be ready for about 6 months, Mr. Jacobsen has submitted a travel voucher claiming reimbursement for travel, transportation, and relocation expenses incurred by him in connection with this transfer. The record indicates that he was issued a travel order on May 10, 1974, authorizing reimbursement for such expenses. That travel order also notes a journal entry reflecting the issuance of a "Notification of Personnel Action" (SF-50), dated May 2, 1974, transferring his official station to Richmond, effective July 1, 1975. On March 11, 1974, Mr. Jacobsen signed the required service agreement. The record also indicates that settlement was held for the sale of Mr. and Mrs. Jacobsen's former residence and the purchase of their new residence on April 3 and 9, 1974, respectively.

The determination by HEW that Mr. Jacobsen and other Center employees may be reimbursed for relocation expenses incurred incident to the transfer after the date of the December 7, 1972 announcement is based on our decisions 48 Comp. Gen. 395 (1968), and 52 Comp. Gen. 8 (1972). Those decisions held that when an employee incurs relocation expenses in anticipation of a transfer, reimbursement for such expenses is authorized if a travel order is subsequently issued to him authorizing reimbursement for the expenses on the basis of a previously existing administrative intention, clearly evident at the time the expenses were incurred by the employee, to transfer him. Although 52 Comp. Gen. 8, supra, further held that claims for reimbursement for relocation expenses incurred in anticipation of a transfer may not be properly paid until and unless the transfer is consummated or canceled, HEW has questioned whether that portion of the decision is applicable to the present case. HEW points out that in 52 Comp. Gen. 8, supra, the employee was officially notified of the transfer but that a travel authorization had not been issued,

whereas, in the present case a travel order and personnel action have been issued and Mr. Jacobsen has signed a service agreement. If it is determined that the ruling in 52 Comp. Gen. 8, supra, is applicable to the present case, HEW has requested reconsideration of that decision. In the alternative HEW has asked whether employees who have received travel orders may be allowed an advance of funds prior to the actual transfer.

In the present case Mr. Jacobsen did incur relocation expenses in anticipation of the transfer in that he incurred the expenses after official notice of the transfer but prior to the authorization of the transfer. Since 52 Comp. Gen. 8, supra, provided that reimbursement for relocation expenses is authorized when a travel order is subsequently issued, the statement in that decision that claims for reimbursement for such expenses may not be properly paid until the transfer is consummated or canceled is based on the assumption that the transfer would be authorized prior to that time. Moreover, Federal Travel Regulations (FPMR 101-7), para. 2-1.3 (May 1973), provides in part that in the case of a transfer of an employee for permanent duty, relocation expenses are payable when the transfer is authorized or approved by proper agency officials. Thus, there is no authority to reimburse an employee for relocation expenses unless the transfer has been authorized or actually effected and approved. Accordingly, we do not believe that the present situation is distinguishable from that involved in 52 Comp. Gen. 8, supra.

Section 2 of Pub. L. No. 89-516, approved July 21, 1966, 80 Stat. 323, added section 28 to the Administrative Expenses Act of 1946, now codified in 5 U.S.C. 5724(i) (1970), and provides that travel, transportation, and relocation expenses incident to a transfer within the continental United States may not be allowed unless and until the employee agrees in writing to remain in the Government service for 12 months following his transfer. Prior to that requirement, an employee was not required to perform a specified period of Government service after a transfer within the continental United States to be entitled to travel and transportation expenses. Accordingly, prior to enactment of Pub. L. 89-516, our decisions generally involved a question of whether employees who did not report for duty at the new duty station or separated after serving a minimal period of service at this new duty station were entitled to reimbursement for these expenses.

Where an employee incurred relocation expenses incident to a transfer but failed to report for duty, our decisions held that he

was not entitled to reimbursement. The basis for this conclusion was that the transfer could not be considered to be in the interest of the Government since no duty had been performed at the new station. 32 Comp. Gen. 280 (1952) and B-157961, January 6, 1966. However, where an employee complied with transfer orders by actually reporting for duty at his new station, our decisions held that the transfer had been consummated and that reimbursement for travel and transportation expenses was proper even if the employee resigned the same day he reported for duty. B-128219, June 29, 1956, and B-157961, January 6, 1966.

Upon reconsideration we do not believe that the rule stated in those decisions would necessarily be applicable to the situation involved in this case or 52 Comp. Gen. 8, supra. Our decisions prior to the enactment of 5 U.S.C. 5724(i) did not generally involve the question of when an employee may be reimbursed for travel and transportation expenses incident to a transfer. Those decisions were primarily concerned with the question of whether an employee who failed to report for duty at his new station or separated shortly after reporting for duty could be reimbursed for expenses of the transfer. Moreover, the problem of entitlement to reimbursement for real estate expenses, involved in the present case, would not have generally been a problem at the time of those decisions since only travel and transportation expenses were allowable at that time. These expenses would generally be incurred just before reporting for duty at the new station and an advance of funds could be authorized for these expenses. Furthermore, although an employee is currently generally required to actually report for duty at his new station to be entitled to reimbursement, this requirement is no longer as critical since in addition to reporting for duty, an employee is required to sign and fulfill a 12-month service agreement.

Sections 5724 and 5724a of title 5, United States Code (1970), authorize payment of travel, transportation, and relocation expenses of an employee transferred in the interest of the Government. Our Office has held that the word "transferred" appearing in the statute relates to an employee who has been ordered or directed to make a permanent change of station. 37 Comp. Gen. 203 (1957) and 27 Comp. Gen. 737 (1948). Thus, an employee would be eligible for reimbursement for relocation expenses already incurred under the statutory provisions when he has been ordered or directed to make a permanent change of station in the interest of the Government.

The primary concern in approving and certifying travel vouchers prior to the consummation or cancellation of the transfer is the

protection of the Government's interests should the employee fail to fully comply with the transfer orders. In those circumstances any amounts previously paid to the employee as reimbursement for relocation expenses would be recoverable from him. This situation is not significantly different from that of an employee who receives an advance of funds incident to a transfer and fails to effect the transfer or from that of an employee who effects a transfer and is reimbursed for relocation expenses or who is reimbursed for relocation expenses incurred prior to the cancellation of his transfer and fails to fulfill the service agreement. The fact that Congress has authorized such payments even though the amounts may subsequently be recoverable from the employee indicates that Congress has determined that the Government's interests are reasonably protected by recovery procedures. Accordingly, where an employee has received transfer orders, has commenced compliance with such orders by incurring relocation expenses properly authorized by those orders, and has met the other regulatory requirements, such as signing a service agreement, we would have no objection to certifying for payment, prior to the actual consummation or cancellation of the transfer, claims for those expenses.

FTR, para. 2-1.6a(1) (May 1973), provides that an employee may be advanced funds for use while traveling and for certain expenses which he may incur incident to a transfer based on his prospective entitlement to reimbursement for those expenses after they are incurred. Accordingly, where travel orders have been issued incident to a transfer, the employee may be advanced funds on the basis of his prospective entitlement to reimbursement for those expenses set forth in FTR, para. 2-1.6a(3).

In view of the present case and of certain others which have come to our attention, we believe that our decisions relating to reimbursement of employees for relocation expenses incurred in anticipation of a transfer need further clarification. As previously indicated, there is no authority under the Federal Travel Regulations or our decisions to reimburse an employee for relocation expenses unless the transfer is authorized or actually effected and approved. Although the Federal Travel Regulations do not expressly state what constitutes the authorization of a transfer, travel orders are generally required by agency regulation to be, or at least are generally recognized as being, the authorizing document. Thus, an employee cannot be assured that he will be reimbursed for relocation expenses incurred by him until he has received a travel order. Our decisions, 48 Comp. Gen. 395, supra,

and 52 Comp. Gen. 8, supra, relating to reimbursement for relocation expenses merely provide that an employee's eligibility for reimbursement for certain relocation expenses will not be adversely affected if they are incurred in anticipation of the transfer, where the transfer is subsequently consummated or cancelled. Moreover, certain relocation expenses may not be reimbursed if they are incurred in anticipation of a transfer since the Federal Travel Regulations require a specific authorization for the reimbursement of the expense or provide that the period of the claim may not begin until the transfer is authorized. See FTR, para. 2-4.3c (May 1973) (house hunting), and FTR, para. 2-5.2e (May 1973) (temporary quarters subsistence expenses).

In view of the above, we believe that the proper means for an agency to provide lead time for the employee to prepare for a transfer is to issue travel orders to him a reasonable time in advance of the effective date of the transfer. Moreover, the agency should balance the need to provide lead time for the employee to prepare for the transfer with its duty to control travel and the fact that if a travel order is issued the agency may be responsible for paying relocation expenses incurred in reliance on such order even if the transfer is subsequently cancelled. Where, however, an employee is aware of an impending transfer or an agency needs to advise an employee of its plans to transfer him before it can issue a travel order, the agency has a duty to inform the employee of his right to reimbursement for expenses incurred in anticipation of a transfer. In these situations an agency should advise the employee that he cannot be assured that he will be reimbursed for relocation expenses incurred in anticipation of the transfer, but before receipt of travel orders, and that certain expenses will not be reimbursable at all if they are incurred in anticipation of the transfer. Furthermore, the agency should not encourage the employee to incur relocation expenses in anticipation of the transfer.

If the voucher submitted by Mr. Jacobsen is otherwise proper, it may be certified for payment in accordance with this decision. To the extent 52 Comp. Gen. 8 (1972) is inconsistent with this decision, it should no longer be followed.

R.F. KELLER

Deputy Comptroller General
of the United States