

DOCUMENT RESUME

02918 - [A2093179]

[Relocation Expenses, Transfer at Employee's Request]. B-189201.  
July 25, 1977. 6 pp.

Decision re: Eernard R. Fernald; by Robert P. Keller, Deputy  
Comptroller General.

Issue Area: Personnel Management and Compensation: Compensation  
(305).

Contact: Office of the General Counsel: Civilian Personnel.

Budget Function: General Government: Central Personnel  
Management (805).

Organization Concerned: Department of the Navy: Naval Sea  
Systems Command.

Congressional Relevance: Rep. David P. Emery.

Authority: 5 U.S.C. 5724, 5724a. 5 U.S.C. 5726 (c). B-187825  
(1977). B-186634 (1977). B-184251 (1975). 2 J.T.R., para.  
C4100.

An employee requested reconsideration of his claim for relocation expenses on the basis that the employing agency did not notify him of his responsibility for such expenses prior to his transfer as required. The employing agency properly determined that the transfer was not in the interest of the Government, and failure to comply with the notice provision in the implementing regulations does not nullify the statutory prohibition against payment of relocation expenses where the transfer is primarily for the benefit of the employee.  
(Author/SC)

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**DECISION**



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

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Civ. Per*

FILE: B-189201

DATE: July 25, 1977

MATTER OF: Bernard R. Fernald - Relocation Expenses -  
Transfer at Employee's Request

**DIGEST:** Washington employee, desiring to relocate, obtained employment at Portsmouth, New Hampshire, and was informed after reporting that transfer was primarily for his benefit. Employee claims relocation expenses because employing agency did not notify him prior to transfer of his responsibility for such expenses, as provided in JTR. Claim is disallowed. Employing agency properly determined that transfer was not in the interest of the Government and failure to comply with notice provision in implementing regulations does not nullify statutory prohibition against payment of relocation expenses where transfer is primarily for benefit of employee.

By letter dated May 8, 1977, to Congressman David F. Emery and referred here by the Congressman's letter of May 17, 1977, Mr. Bernard R. Fernald has requested reconsideration of his claim for relocation expenses. This claim was disallowed by our Claims Division in a Settlement Certificate, Z-2622040, issued April 5, 1977, on the grounds that his transfer was at his request and primarily for his convenience and benefit, rather than in the interest of the Government.

Mr. Fernald, a Supervisory Facilities Specialist, grade GS-13, employed by the Naval Sea Systems Command in the Washington, D.C., area, desired for personal reasons to relocate in the Portsmouth, New Hampshire, area and submitted an application for employment at the Portsmouth Naval Shipyard which was received in March 1974. Sometime around the first of August 1974 he was offered employment at the shipyard as an Industrial Engineering Technician, grade GS-11. The file does not reflect the exact date of the offer but the Request for Preliminary Employment Data sent from Portsmouth to Washington, which usually precedes a firm offer of employment, was dated August 5, 1974, and it is indicated that an oral offer was made on August 8, 1974.

In the interim between his application and the offer of employment Mr. Fernald entered into a contract for the sale of his residence at Bowie, Maryland, on or about May 5, 1974. Additionally,

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he apparently began making arrangements for the transportation of his household goods from Bowie to North Berwick, Maine, since an entry on the North American Van Lines bill of lading covering the shipment shows the originally agreed to date of delivery as June 14 to June 20, 1974. Settlement for the sale of the residence at Bowie was on August 13, 1974, and for purchase of the residence at North Berwick, on August 20, 1974. The household goods were delivered on August 21, 1974.

Mr. Fernald accepted the grade GS-11 position offered by the Portsmouth Naval Shipyard and reported for duty on September 3, 1974. No orders authorizing a permanent change of station or the payment of relocation expenses were issued. He did not sign an agreement to remain in the service of the Government for 12 months after his transfer.

In response to his inquiry after reporting for duty Mr. Fernald was informed that he would not be reimbursed for his relocation expenses because the transfer was at his request and primarily for his benefit, but that he could file a claim if he so desired. This he did by memorandum dated August 1, 1975, claiming reimbursement for the following expenses: sale of residence at Bowie, \$2,457; purchase of residence at North Berwick, \$77; per diem, \$11.30; tolls, \$7.35; miscellaneous expenses, \$200; mileage, \$40.80; and transportation of household goods, \$1,343.92 - a total of \$4,137.87.

Mr. Fernald concedes that he requested the transfer but contends that he should be reimbursed because he was not informed prior to the move that he would have to pay his own expenses. He states that he was told by the Washington personnel office that reimbursement would not be a question unless he was informed otherwise and that three other employees who transferred from Washington to Portsmouth at about the same time were informed in writing that they would have to relocate at their own expense. The file indicates that it was the policy of the shipyard to give such written notice but for some reason this was not done in Mr. Fernald's case. Mr. Fernald further contends that his transfer should be construed to be in the interest of the Government because there was a need for his services at the shipyard.

The claimed relocation expenses may be paid by the Government only if authorized by the governing statutory provisions, which are found in sections 5724 and 5724a of title 5, United States Code.

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Section 5724, which governs the payment of travel and transportation expenses of transferred employees, provides in pertinent part as follows:

"(a) Under such regulations as the President may prescribe and when the head of the agency concerned or his designee authorizes or approves, the agency shall pay from Government funds--

"(1) the travel expenses of an employee transferred in the interest of the Government from one official station or agency to another for permanent duty, and the transportation expenses of his immediate family, or a commutation thereof under section 5704 of this title; and

"(2) the expenses of transporting, packing, crating, temporarily storing, draying, and unpacking his household goods and personal effects not in excess of 11,000 pounds net weight.

\* \* \* \* \*

"(h) When a transfer is made primarily for the convenience or benefit of an employee, including an employee in the Foreign Service of the United States, or at his request, his expenses of travel and transportation and the expenses of transporting, packing, crating, temporarily storing, draying, and unpacking of household goods and personal effects may not be allowed or paid from Government funds.

"(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

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by the United States for the expenses and allowances is recoverable from the employee as a debt due the United States. \* \* \* " (Emphasis added.)

Section 5724a authorizes payment of per diem, real estate, miscellaneous, and other relocation expenses of transferred employees, but only if they qualify for travel and transportation expenses under the provisions of section 5724.

The authority to make the determinations required by these statutory provisions as to whether a transfer is in the interest of the Government and whether the payment by the Government of relocation expenses is to be authorized or approved rests primarily with the employing agency. Matter of William D. Vogel, B-187825, February 11, 1977; Matter of Phillip E. Schaeffer, B-186684, February 2, 1977; Matter of Dante P. Fontanella, B-184251, July 30, 1975. The Portsmouth Naval Shipyard determined that Mr. Fernald's transfer was primarily for his convenience or benefit and at his request. The record supports this determination. He applied for employment at Portsmouth on his own initiative, he began arrangements to move to the area before the shipyard offered him a position which indicates that he intended to relocate there whether he obtained employment at the shipyard or not, and he accepted a reduction in grade in order to be employed there.

Mr. Fernald predicates his claim on provisions of paragraph C4100 of Volume 2 of the Department of Defense's Joint Travel Regulations which are as follows:

"1. \* \* \* A permanent change-of-station movement will not be authorized at Government expense when it is primarily for the benefit of the employee or at his request. If the movement is determined not to be in the interest of the Government, the employee will be informed prior to the movement as to his responsibility for payment of travel and transportation expenses.

"2. MOVEMENTS IN THE INTEREST OF THE GOVERNMENT. The following movements are considered to be in the interest of the Government:

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\* \* \* \* \*

"6. for reassignment of a qualified employee to an activity where his services are needed including those cases in which the employee initiates the request for movement but such request is not necessarily the deciding factor \* \* \*,"  
(Emphasis added.)

Prior notice of the transferred employee's responsibility for relocation expenses was considered in the previously cited Vogel and Schaeffer cases. However, that issue was not determinative of the outcome of those cases, nor is it determinative of the outcome of this case. The Joint Travel Regulations are subordinate to and merely implement the duly enacted laws governing travel and transportation and these regulations may not be construed to contravene or nullify the explicit provisions of these statutes. It appears to us that Mr. Fernald knew or should have known prior to his move that he would be responsible for his expenses, but in any event, the failure of the employing agency to give the notice provided for in paragraph C4100-1 could not nullify the statutory prohibition against the payment of relocation expenses in a transfer found to be primarily for the benefit or convenience of the employee.


As to paragraph C4100-2, item 6, it does not appear that there was sufficient need for Mr. Fernald's services at the shipyard to bring him within the purview of this regulation. In fact, the record indicates a lack of such need. A memorandum from the shipyard to him, dated May 16, 1975, reads in pertinent part as follows:

"As you know, you submitted an application for employment at Portsmouth since you and your family desired to relocate in this area. Your application was received in March 1974 and we were trying to place you in a position within the Plant Equipment and Facilities Branch where additional vacancies were being established. We finally had a vacancy for which you qualified and you reported for duty on 3 September 1974."

See also the discussion of the need for the transferred employee services in the previously cited cases of Vogel, Schaeffer, and Fontanella.

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Accordingly, since Mr. Fernald's transfer has been determined by the employing agency to be primarily for his benefit and convenience and at his request and not in the interest of the Government, since no travel orders were issued authorizing or approving the payment by the Government of his relocation expenses, and since he signed no agreement to remain in the service of the Government for 12 months following his transfer, the payment of his relocation expenses is prohibited by the provisions of the governing law, 5 U. S. C. §§ 5724 and 5724a. Therefore, the disallowance of his claim by our Claims Division is sustained.

  
Deputy Comptroller General  
of the United States