

8257
PLM-1

DECISION



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

FILE: B-191462

DATE: November 7, 1978

MATTER OF: Josef D. Prall - Travel and Relocation
Expenses

- DIGEST: 1. Employee of Drug Enforcement Administration, Department of Justice, transferred from Washington, D. C., to Dallas, Texas, effective December 9, 1973, may not receive reimbursement for travel and relocation expenses pursuant to 5 U. S. C. §§ 5724 and 5724a, and paragraph 2-1.3 of the Federal Travel Regulations (FPMR 101-7) (May 1973), where designated officials determined that transfer was at claimant's request, primarily for his convenience, and at no expense to the Government.
2. Legal rights and liabilities in regard to travel allowances vest at time travel is performed under travel orders and such orders may not be revoked or modified retroactively so as to increase or decrease rights which have become fixed under applicable regulations. Exception may be made only when error is apparent on face of travel orders and all facts and circumstances demonstrate that some provision previously determined and definitely intended has been omitted through error or inadvertence. B-175433, April 27, 1972.
3. Allegation that claimant was lied to and deceived by designated agency officials in regard to travel entitlement incident to official change of station must be accompanied by substantial evidence of Government liability to support contention that agency determination was abuse of statutory discretion.

This decision is in response to a letter dated March 2, 1978, from Mr. Josef D. Prall, an employee of the Drug Enforcement Administration (DEA), Department of Justice (DOJ), appealing

B-191482

the finding of our Claims Division in Settlement Certificate Z-2639577, December 14, 1977, which disallowed his claim for travel and relocation expenses incident to a permanent change of official station from Washington, D. C., to Dallas, Texas, effective December 9, 1973.

In disallowing Mr. Prall's claim our Claims Division found that he had requested the change of official station in October 1973 for his personal convenience and at his own expense. Therefore, applicable provisions of paragraph 2-1.3, of the Federal Travel Regulations (FTR) (FPMR 101-7) (May 1973) precluded reimbursement for his travel and relocation expenses.

Mr. Prall has presented no evidence on appeal of any error of fact or law contained in settlement certificate December 14, 1977. However, Mr. Prall contends that our Claims Division misunderstood the basis of his original claim. Mr. Prall states that his claim is based on the fact that persons in an official capacity lied to him with the intent to deceive him into signing a statement that he would pay for his own move.

The statutory provisions for an employee's entitlement to travel and transportation expenses in connection with a change of official station, 5 U. S. C. § 5724(a), are implemented by paragraph 2-1.3 of the FTR (FPMR 101-7) (May 1973) which states in pertinent part that:

"* * * When change of official station or other action described below is authorized or approved by such official or officials as the head of the agency may designate, travel and transportation expenses and applicable allowances as provided herein are payable in the case of (a) transfer of an employee from one official station to another for permanent duty, Provided That: the transfer is in the interest of the Government and is not primarily for the convenience or benefit of the employee or at his request * * *."

This regulatory qualification precludes payment for reimbursement of travel and relocation expenses where the agency head has exercised his discretion in finding that the transfer is not primarily based upon the interest of the Government, or that the transfer

B-191482

is primarily for the convenience of the employee, or that the employee has requested the transfer. Our Office has consistently concluded that it is within the discretion of the employing agency to determine in any given case whether a transfer is in the interest of the Government or for the convenience of the employee, or at his request. See B-184251, July 30, 1975; and B-187825, February 11, 1977.

The administrative record reflects the fact that DEA designated officials determined that Mr. Prall was transferred primarily for his personal convenience and at his request, therefore travel and relocation expenses incurred in the transfer were not authorized for reimbursement by the DEA. This determination is sanctioned by the discretionary authority vested in agency heads and their designees in the course of performing their official functions pursuant to 5 U.S.C. § 5724 and paragraph 2-1.3 of the FTR (FPMR 101-7) (May 1973).

The fact that other employees were granted statutory expenses and allowances in circumstances similar to Mr. Prall's, does not in itself support the contention that a retroactive reimbursement should be made to satisfy his claim. Our decision B-180578, January 3, 1977, set forth the policy of this Office regarding to establishing an entitlement to travel expenses and allowances, by concluding in part that:

"* * * Legal rights and liabilities concerning travel allowances are established at the time the travel is performed under the travel authorization and the authorization may not be revoked or modified retroactively so as to increase or decrease the rights which have become fixed under the applicable statutes or regulations." See also B-175433, April 27, 1972.

An exception to this policy may be made only when an error is apparent on the face of the orders and all facts and circumstances clearly demonstrate that some provision previously determined and definitely intended has been omitted through error or inadvertence in preparing the orders. See 23 Comp. Gen. 713 (1944); B-175433, *supra*; and B-186578, *supra*. Since authorizing officials intended not to reimburse Mr. Prall for the costs of his

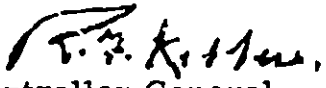
B-191482

transfer of official station and since Mr. Prall's orders clearly reflect that intention, this exception is inapplicable in the present case.

We note further that in the event that Mr. Prall had acted upon erroneous advice in signing the necessary change of official station orders, the Government nevertheless could not be held liable for his moving expenses. As we stated in our decision in B-186684, February 2, 1977, " * * * in the absence of specific statutory authority, the United States is not liable for the erroneous actions of its officers, agents, or employees even though committed in performance of official duties." See also 44 Comp. Gen. 337, 339 (1964). However, in the instant case we find no evidence of erroneous advice or omissions on the part of DEA officials in regard to Mr. Prall's entitlement to reimbursement for travel and relocation expenses. Mr. Prall was neither ordered nor induced to seek a transfer of official station to Dallas. On the contrary, Mr. Prall initiated the action by submitting a memorandum request for a transfer to Dallas and completed the transfer of official station by signing the required "Notification of Personnel Action" (form DOJ-50) which acknowledges that the reassignment was at his request and at no expense to the Government.

It is the well-established policy of this Office that one who asserts a claim has the burden of furnishing substantial evidence to clearly establish liability on the part of the Government. See B-187825, supra; and cases cited therein. There is no evidence in the record to support Mr. Prall's contention on appeal that he was lied to by DEA officials, nor that they misrepresented material facts with an intent to deceive him in any manner. In view of the preceding analysis and in the absence of substantial evidence that the decision by DEA officials denying reimbursement for Mr. Prall's travel and relocation expenses amounted to an abuse of statutorily mandated discretion, there remains no basis on which to allow Mr. Prall's claim.

Accordingly, the adjudication of our Claims Division in settlement certificate dated December 14, 1977, is sustained.


Deputy Comptroller General
of the United States