

Mr. Putnam

15224

PLMI

**DECISION**



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

FILE: B-197609

DATE: October 20, 1980

MATTER OF: John F. Pattie - Cancelled Transfer -  
Real Estate Expenses

*[Claim for Reimbursement of Real Estate Expenses]*

**DIGEST:**

Employee accepted transfer of station, signed service agreement, and received travel orders. Employee was informed that position description would remain the same at new station. Ten days prior to transfer, he was notified that he would be subject to another level of supervision. He declined transfer. In absence of a determination by agency that employee declined transfer for reasons beyond his control and acceptable to agency, there is no authority to reimburse the expenses incurred in sale and purchase of his residences or to pay miscellaneous expense allowance.

This decision is in response to a request by Mr. Foon C. Lee, Authorized Certifying Officer, National Park Service, United States Department of the Interior, as to whether he may certify for payment a travel voucher in the amount of \$4,864.00 submitted by Mr. John F. Pattie, an employee of the agency, for reimbursement of expenses incurred in the sale of his old residence and the purchase of a new residence at his duty station. Mr. Lee questions whether such costs were incurred in the interest of the Government since Mr. Pattie failed to comply with his transfer orders and failed to fulfill his service agreement.

The pertinent facts and circumstances forming the basis of the claim are not in dispute and are as follows. By travel order dated December 15, 1978, Mr. Pattie, Land Acquisition Officer (LAO), GS-1170-13,

~~012543~~ 113593

B-197609

at the St. Croix National Scenic Riverway in Wisconsin, was authorized a permanent change of duty station to Santa Monica Mountains National Recreational Area, Santa Monica, California. The travel order, signed by the Director, Western Region, certified that the travel of Mr. Pattie and his wife had been determined to be essential for the accomplishment of Park Service programs and missions.) In connection with the transfer Mr. Pattie signed an Employee Relocation Allowance Agreement on December 12, 1978, in which he agreed to remain in the service of the Federal Government for 12 months following the effective date of transfer in consideration of payment by the Federal Government of the authorized relocation expenses.

The following events led to the execution of the travel order and the service agreement. Mr. Pattie became interested in the Santa Monica Mountains project during the early part of 1978 when the proposal was pending before Congress. He informally discussed the position of Land Acquisition Officer for the Santa Monica project with several officials of the Western and Midwest Regional Offices. After the authorizing legislation was passed by the Congress in early November 1978 Mr. Pattie informed the Chief, Western Regional Office, of his decision to accept the LAO position if it were offered at the GS-14 level and if he were selected. He also stated that he was interested in a lateral transfer at the GS-13 grade level since he and the Chief, Western Regional Office, believed that the project could justify upgrading the LAO position to the GS-14 grade level, either currently or later.

On November 28, 1978, while in the Omaha Regional Office on official business, Mr. Pattie was offered the LAO position for the Santa Monica project as a lateral transfer at the GS-13 grade level. He was advised that a decision was needed that day and that his decision should not be based on the possibility that the position might later be classified at the GS-14 level. Mr. Pattie accepted the lateral transfer on these conditions. Upon

B-197609

his return from Omaha the employee contacted his real estate broker, with whom he had made earlier preliminary contacts, and agreed to sign a contract for the sale of his home in Balsam Lake, Wisconsin.

Prior to making a trip to the Western Regional Office during the week of December 10, 1978, Mr. Pattie received a telephone call from the Chief of Lands of the Western Regional Office. A copy of the claimant's present position description was requested. He was informed that this position description would be duplicated for the Santa Monica position. With respect to supervision, the position description states:

"The incumbent is supervised by the Regional Chief, Land Acquisition Division. The supervisor provides administrative direction with assignments in terms of broadly defined mission or function. The incumbent is responsible for independently planning, designing, and carrying out the duties as described without significant change. Completed work is reviewed with regard to fulfillment of the land acquisition program objectives".

During the week of December 10, 1978, Mr. Pattie conferred with the Chief, Division of Lands, Western Regional Office, and his staff, the park planners involved with the Santa Monica project, and the "Activation Team" implementing the National Parks and Recreation Act of 1978, Public Law 95-625. During that period the Chief, Division of Lands, informed Mr. Pattie that his transfer had been approved. He was introduced as the new Land Acquisition Officer of the Santa Monica project. Also, Mr. Pattie applied for and received a travel advance of \$1,400 which he has since refunded.

B-197609

On January 4, 1979, 10 days prior to the date Mr. Pattie was due to report to Santa Monica, he received a call from the Chief, Division of Lands, Western Regional Office, who advised him to the general effect, "by the way, the Director has had your job description rewritten so that you will be under the direct supervision of the project superintendent. Will you have any trouble with that?" Mr. Pattie states that he was stunned by this last minute change and requested that he be allowed until the following day to consider how the change in supervision would affect him. After discussing the effect of the change in supervision with his family, members of his staff, and his supervisors, Mr. Pattie decided that this change in his position description, without his prior knowledge, constituted a major change in the LAO position he had previously accepted at Santa Monica. He reasoned that the Santa Monica position might actually be considered a demotion since he would be going from a position where he was in charge of a section that reported directly to the regional office to one where he would be third in command of land acquisition since the Santa Monica project had been assigned an assistant superintendent at that time. On January 5, 1979, Mr. Pattie informed the Chief, Division of Lands, Western Regional Office, that he was declining the transfer to Santa Monica for the reasons previously stated.

Mr. Pattie feels that he should have been informed of the major change in the responsibilities of the LAO position at Santa Monica, in advance, in order that he could have made a decision whether to accept the new position based upon all pertinent information pertaining to the position. He seeks reimbursement of expenses incurred in selling his former residence at Balsam Lake, Wisconsin, in the sum of \$4,049; closing costs incurred in connection with the construction of a replacement dwelling at St. Croix Falls, Wisconsin, in the amount of \$615; and a \$200 miscellaneous expense allowance.

B-197609

In a memorandum dated November 28, 1979, Mr. Robert S. Chandler, Superintendent, Santa Monica Mountains, National Recreational Area, stated that in addition to the reasons cited by Mr. Pattie, the employee had expressed concern about the high cost of living in the Los Angeles area and the problems associated with accepting a lateral transfer into a high-cost area at that stage of his career. It was his understanding that the supervision, cost of living, and area concerns collectively caused Mr. Pattie to change his mind about accepting the Santa Monica position.

Section 5724a(a)(4) of title 5, United States Code, as implemented by Chapter 2, Part 6, of the Federal Travel Regulations (FTR) (FPMR 101-7) May 1973, authorizes reimbursement to an employee for certain expenses incurred in connection with the sale of one residence at his old official station and the purchase of a dwelling at his new official station when required by a transfer of official station in the interest of the Government. Section 5724a(b) of title 5, United States Code, and FTR, Part 3, authorize payment of a miscellaneous expense allowance to an employee transferred in the interest of the Government. Where the employee does not actually enter upon duty at his new duty station, he may not be regarded as having performed travel in the interest of the Government. 32 Comp. Gen. 280 (1952); B-157961, January 6, 1966.

However, this Office has also held that where a transfer has been cancelled and relocation expenses would have been reimbursable had the transfer been effected, an employee may be reimbursed for expenses incurred in anticipation of the transfer and prior to its cancellation. See Orville H. Myers, et al., 57 Comp. Gen. 447 (1978); B. Lee Charlton, B-189953, November 23, 1977; Dwight L. Crumpacker, B-187405, March 22, 1977; and B-177439, February 1, 1973. If the employee's duty station did not change as a result of the cancelled transfer, then we have

B-197609

allowed reimbursement as if the transfer had been completed and the employee had been retransferred to his former duty station. Myers, supra; and Crumpacker, supra. See also Thomas L. Briggs, B-192469, April 4, 1979.

Under the above-cited decisions, ordinarily, the revocation of transfer orders at the request of an employee will not be regarded as a cancelled transfer for the purpose of reimbursement of relocation expenses. In the instant case, the transfer of Mr. Pattie to Santa Monica Mountains had been determined to be in the best interest of the Government, and had he fully complied with his travel order, he would have been entitled to reimbursement of relocation expenses incurred incident to the transfer. However, Mr. Pattie decided not to comply with his travel order, for reasons he felt were in his best interest, and elected instead to remain in his present position at St. Croix.

Under a similar factual situation, this Office determined that where an employee did not transfer to a new duty station and his travel order was not cancelled for official reasons, there was no authority to reimburse the employee the costs he had incurred in selling his residence. James G. Flanigan, B-183801, March 24, 1976.

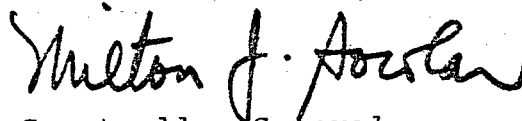
In another decision, Frank Finch, B-166909, July 14, 1976, an employee of the Corps of Engineers, a Civil Engineer, accepted a similar position at a higher grade with another District. Travel orders were issued authorizing a permanent change of station. Prior to transfer, the District Engineer, the employee's supervisor, requested that he consider declining the offer since it was felt that the employee was the best qualified internal candidate for another position. The employee agreed and declined the transfer in order to take his chances on selection for the other position. He was selected to fill the second position. The District Engineer stated that he considered the

B-197609

employee's declination of the original offer to be in the best interest of his District. The position the employee accepted was in the hard-to-fill category and critical to the accomplishment of the mission of that District. We allowed payment of expenses incurred by the employee while on a house-hunting trip in connection with the aborted transfer. We stated that, although FTR sections 2-4.3a and 2-1.5a(1)(a) require that the employee complete his transfer to receive travel and transportation benefits, adherence to this requirement is unnecessary where the agency has determined that cancellation of the transfer was in the best interest of the Government. Compare William E. Weir, B-189900, January 3, 1978.

In the case before us, there has been no determination by the Park Service that the cancellation of the transfer of Mr. Pattie to Santa Monica Mountains was in the best interest of the Government. In the absence of a determination by appropriate management officials of the National Park Service that Mr. Pattie did not complete the transfer for reasons beyond his control and acceptable to the agency, there is no authority to reimburse the expenses incurred by him in the sale and purchase of the residences at his old duty station or to pay him a miscellaneous expense allowance.

Accordingly, the travel voucher in the amount of \$4,864.00 may not be certified for payment.



For The Comptroller General  
of the United States