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**DECISION**



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

**FILE: B-203439**

**DATE: January 27, 1982**

**MATTER OF: Fred L. Spillan**

**DIGEST:** Employee who transferred from GS-11 position at Veterans' Administration in Phoenix, Arizona, to GS-12 position at General Services Administration in Philadelphia, Pennsylvania, under merit promotion program claims relocation expenses on basis that transfer was in interest of Government. Absent agency regulations to the contrary, selection and transfer under merit promotion program is regarded as transfer in interest of Government and employee transferred thereunder may not be denied relocation expenses notwithstanding existence of budget constraints.

By a letter dated May 7, 1981, an authorized certifying officer with the General Services Administration (GSA), requested an advance decision concerning Mr. Fred L. Spillan's claim for relocation expenses incident to a merit promotion transfer. For the reasons stated herein we find that the voucher may be certified for payment, if otherwise proper.

The record shows that Mr. Spillan, a GS-11 employee of the Veterans' Administration in Phoenix, Arizona, applied for the position of Safety Specialist, GS-9/11/12, in Philadelphia, Pennsylvania, under the General Services Administration's Merit Promotion Program. He was selected for the position at grade GS-12 and at the time of selection he was informed that due to monetary limitations he would not be paid for relocation expenses. He was also informed that it was not agency policy to pay relocation expenses for every selectee.

Mr. Spillan accepted the position and is now requesting reimbursement for expenses related to his relocation from Scottsdale, Arizona, to Mt. Laurel, New Jersey, on the basis that the transfer was in the interest of the Government. The certifying officer inquires as to his authority to reimburse Mr. Spillan in the absence of travel orders authorizing payment of relocation expenses.

Reimbursement of travel and relocation expenses upon an employee's change of station under 5 U.S.C. §§ 5724 and 5724a (1976) is conditioned upon a determination by the head of the agency concerned or his designee 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. In this connection see para. 2-1.3, Federal Travel Regulations (FPMR 101-7) (May 1973). See also Michael J. DeAngelis, B-192105, May 16, 1979; and Paul J. Walski, B-190487, February 23, 1979.

We have allowed relocation expenses on merit promotion transfers where an agency's own regulations provided that such transfers are in the Government's interest. Our holding in Stephen P. Szarka, B-188048, November 30, 1977, involved an Air Force employee who was selected for a position in California that had been advertised by an agency-wide vacancy announcement under the merit promotion program. When the selection was made, the employee was informed that he would have to pay his own expenses of transferring from Florida. We overruled the agency's determination that the transfer was for the employee's benefit because the Air Force, by regulation, had determined that transfers under the merit promotion program were in the interest of the Government.

We addressed the matter of merit promotion transfers in the absence of agency regulations in Eugene R. Platt, 59 Comp. Gen. 699 (1980) and Reconsideration of Platt, 61 Comp. Gen. \_\_\_\_\_, B-198761, December 23, 1981. In the 1980 case we stated:

"It is evident that the wide dissemination of vacancy announcements is a means of attracting qualified eligibles for vacant positions. The primary purpose of the merit promotion program is 'to ensure systematic means for selection for promotion according to merit.' 5 C.F.R. § 335.103 (1979). Through open competition eligible persons are given the opportunity to compete for vacancies, and agencies are able to reach a wider pool of applicants, and refer the best qualified candidates to a selecting official. The fact that employees

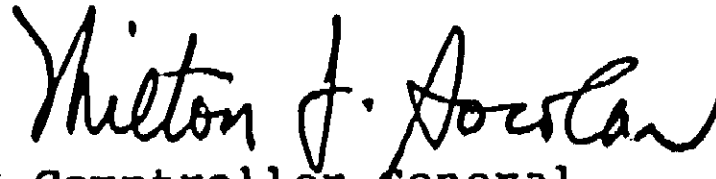
have to apply for such vacancies, or that the promotion may be, and usually is, also in the employee's best interest, does not change the fundamental truth that the purpose and intent of merit promotion is to serve the Government's interest by obtaining the best qualified persons for vacant positions."

The GSA's initial decision not to reimburse Mr. Spillan is based on a misunderstanding of our decisions. Though Mr. Spillan was advised that GSA does not reimburse relocation expenses in every transfer situation, it appears that the primary reason for denying reimbursement in his particular case was the existence of budget constraints. In our decision David C. Goodyear, 56 Comp. Gen. 709 (1977), we held that budget constraints cannot form the basis for denying an employee relocation expenses if his transfer has been found to be in the Government's interest. Further, in Donald P. Fontanella, B-184251, July 30, 1975, we stated that if the agency recruits or requests an employee to transfer to a different location it will normally regard such transfer as being in the interest of the Government. While we noted in Reconsideration of Platt, supra, that an agency is not precluded from governing relocation benefits in merit promotion transfers by regulation, our view as stated in Platt, supra, and Reconsideration of Platt, supra, is that absent agency regulation to the contrary when an agency issues an announcement of an opening under its merit promotion program such action is a recruitment action with the scope of Fontanella.

We are not aware that any GSA regulations governing merit promotion contain any limitation on reimbursement of relocation expenses occasioned by selection under their merit promotion program, and we have not been advised that GSA has a policy that would require it to treat merit promotion transfers as having been accomplished for the convenience of the employee. See James F. Hansard, B-201732, June 30, 1981, also involving an employee selected and transferred under GSA merit promotion procedures. Since Mr. Spillan's transfer was the result of his selection under merit promotion procedures, his transfer is to be

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regarded as having been accomplished in the interest of the Government. He is, therefore, entitled to the relocation expenses claimed, insofar as otherwise proper.

A handwritten signature in cursive script, reading "Milton J. Rowland".

Acting Comptroller General  
of the United States