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The Comptroller General  
of the United States

Washington, D.C. 20548

# Decision

Matter of: Richard H. Pajak

File: B-221641

Date: October 16, 1986

## DIGEST

A handicapped employee who was found to have suffered discrimination as the result of his handicap may not be awarded expenses for commuting to his permanent duty station even though his transfer to that duty station was found to have been the result of discrimination. Neither the Civil Rights Act, as amended (42 U.S.C. 2000e-16), nor the Back Pay Act (5 U.S.C. § 5586) provides authority to reimburse travel expenses which are incidental to the discrimination and are not of the type which would have been reimbursed but for the acts of discrimination. The expenses in this case were incurred because of the employee's decision to move his residence to a location 80 miles away from his new duty station.

## DECISION

A handicapped employee injured in a job-related accident was forced to transfer from Auburn, Maine, to Fort Devens, Massachusetts, 160 miles away, when Army officials at the Auburn installation refused to reasonably accommodate his handicap. Incident to that transfer the employee moved his residence to a location midway between Auburn and Fort Devens. We are asked whether, upon a finding of discrimination, he may be indemnified for the transportation and subsistence expenses he incurred while commuting between his residence and Fort Devens before being transferred back to Auburn.<sup>1/</sup> We hold that there is no authority to pay these expenses recommended by the Complaints Examiner as corrective action for the discriminatory actions taken against the employee.

<sup>1/</sup> Ms. Dolores C. Symons, Director, Equal Employment Opportunity Compliance and Complaints Review Agency, Department of the Army, submitted this request for a decision.

## BACKGROUND

Mr. Richard H. Pajak was employed as a mobile equipment worker at the 94th Army Reserve Command, Auburn, Maine, an Army installation near his home in Sabattus, Maine. On September 20, 1979, while performing his assigned duties, he injured his right knee. He did not work from the day of injury until March 8, 1981. When he returned to work on March 8, 1981, he was forced to accept a transfer to a job at Fort Devens, Massachusetts, 160 miles away, because management did not accommodate his physical handicap resulting from his work-related injury. During the first 2 months, Mr. Pajak commuted from Sabattus to Fort Devens which is 320 miles round trip. In May 1981, he moved his family to York, Maine, midway between Sabattus and Fort Devens, thereby cutting his round-trip commute in half. In February 1983, Mr. Pajak was transferred back to the position he held in Maine.

Mr. Pajak filed a complaint of handicap discrimination against the Department of the Army Headquarters, Fort Devens. The hearing was convened on January 5, 1983, at the offices of the Equal Employment Opportunity Commission (EEOC), Boston, Massachusetts. The EEOC Complaints Examiner recommended a finding of discrimination and that complainant be indemnified for all out of pocket expenses incurred while traveling between his home and Fort Devens, Massachusetts. The Department of the Army adopted the Complaints Examiner's recommended decision, but notified complainant that, except for reimbursement of all reasonable relocation expenses incident to his transfer to Fort Devens and back again to Maine consistent with 5 U.S.C. § 5724 and Federal Travel Regulations, it was withholding the recommended remedy pending a decision of the Comptroller General. In submitting the case here for decision, the Army notes that we authorized payment of relocation expense by an agency in settlement of a discrimination complaint in Marvin Adair, B-215190, March 20, 1985. It requests advice as to its authority to reimburse commuting and lodging costs as part of the recommended remedy for discrimination against Mr. Pajak.

## ANALYSIS

Handicapped individuals are protected from discrimination in Federal employment by 29 U.S.C. § 794 which provides that no qualified handicapped individual shall be subjected to discrimination under any program or activity conducted by any Executive agency. Under 29 U.S.C. § 794(a)(1) the remedies, procedures and rights set forth in section 717 of the Civil Rights Act of 1964, as amended (42 U.S.C. § 2000e-16) are

available to individuals who feel they have been discriminated against by an Executive agency on the basis of a handicap. As to those remedies, 42 U.S.C. § 2000e-16(b) provides that the EEOC shall have authority to enforce the statutory prohibitions against discrimination:

"\* \* \* through appropriate remedies, including reinstatement or hiring of employees with or without back pay, as will effectuate the policies of this section, and shall issue such rules, regulations, orders and instructions as it deems necessary and appropriate to carry out its responsibilities under this section.\* \* \*"

The EEOC has promulgated regulations under the above authority which are published at 29 C.F.R. Part 1613. Subsection 1613.2-1(b) sets forth the remedial actions which may be taken by an agency when it finds that an employee has been discriminated against. These remedies include, but are not limited to, retroactive promotion with backpay computed under the Back Pay Act, 5 U.S.C. § 5596. They also include such actions as consideration for promotion, an opportunity to participate in employee benefits which have been denied and cancellation of unwarranted personnel actions. Under the above authorities, we have held that monetary awards issued in settlement of discrimination complaints must be related to backpay computed under the Back Pay Act and may not include compensatory or punitive damages. 62 Comp. Gen. 239 (1983).

We have held that the Back Pay Act does not authorize payment of travel, transportation or moving expenses when they are incidental expenses incurred by an employee as a consequence of an unjustified or unwarranted personnel action. See Ralph C. Harbin, 61 Comp. Gen. 57, 60 (1981), in which we drew a distinction between travel expenses which are incidental to a wrongful action and those which would have been received by the employee but for the wrongful personnel action. Only the latter may be reimbursed under the terms of the Back Pay Act. In addition, we have specifically held that the Civil Rights Act of 1964, as amended (42 U.S.C. § 2000e-16) does not provide for payment of travel or other incidental expenses in the nature of those here in issue. Marie R. Streeter, B-191056, June 5, 1978.

The Streeter case involved a finding of discrimination similar to that in Mr. Pajak's case in that the discrimination ultimately manifested itself in a transfer from one duty station to another. In complying with the recommendation of

the deciding body which found that the employee had been discriminated against, the agency retroactively restored the employee to her former station and, in doing so, authorized a permanent change of station and relocation expenses back to her former agency. The employee did not claim reimbursement for relocation expenses, but instead submitted a claim for per diem during the period that she was wrongly assigned to the new duty station. Noting that a per diem allowance may not be paid at an employee's permanent duty station, we held that the retroactive reinstatement of the employee to her original duty station did not have the effect of changing the duty station to which she was wrongly transferred from a permanent to a temporary duty station. That decision, in denying the employee's claim for temporary duty expenses, was based on the absence of any authority under either the Civil Rights Act, as amended, 42 U.S.C. § 2000e-16, or the Back Pay Act, 5 U.S.C. § 5596, for payment of travel or other incidental expenses.

The result in Streeter is consistent with the decision of this Office holding that remedial action restoring an employee to his or her former duty station following a wrongful transfer does not change the nature of the interim duty assignment from permanent to temporary duty. Marie B. Ferrell, B-198381, February 13, 1981, and Anthony A. Esposito, B-197023, March 14, 1980. The Streeter case is to be distinguished from cases such as Marvin Adair, B-125190, supra, in which we held that the Civil Rights Act provides a basis to allow the discriminating agency to pay an individual's relocation costs when, as part of an informal settlement of his discrimination complaint, the employee accepted a transfer to another agency. We have long recognized that it is appropriate to pay relocation expenses when, as part of the remedy for wrongful personnel action, an employee is transferred to another duty station. See e.g., Jimmy Morris, B-188358, August 10, 1977. Authority to pay relocation expenses incident to transfer exists by virtue of 5 U.S.C. § 5724 and 5724a independent of either the Civil Rights Act or the Back Pay Act. Our holding in the Adair case did not result in any additional entitlement on the part of the employee; it merely permitted the discriminating agency to pay the relocation expenses that the gaining agency would have been required to pay under 5 U.S.C. § 5724(e). As noted in that decision, the payment was not in any sense an award of compensation for alleged harm suffered by the employee. It was simply a means of facilitating the transfer which had been negotiated in settlement of the discrimination complaint.

In Mr. Pajak's case, the travel expenses contemplated by the recommended award include expenses for commuting between the employee's residence and Fort Devens for nearly 2 years, as well as costs of commercial lodgings at Fort Devens on nights when inclement weather prevented him from returning to his residence. The Department of the Army has authorized Mr. Pajak reimbursement for relocation expenses incurred in connection with his transfer to Fort Devens in 1981 and those expenses incurred in connection with his retransfer to Auburn in February 1983. In accordance with the decisions cited above, Mr. Pajak's retransfer to Auburn did not change the status of Fort Devens as his permanent duty station prior to the effective date of that transfer. An employee may not be reimbursed expenses for daily commuting to his permanent duty station or subsistence expenses at his permanent duty station. Jimmy Morris, B-188358, August 10, 1977. Accordingly, Mr. Pajak may not be reimbursed for the expenses he incurred in commuting to or in lodging at Auburn. There is no basis under the Back Pay Act to allow these expenses. Moreover, these expenses were not a necessary consequence of the discriminatory action, but a result of Mr. Pajak's decision to relocate his residence to a location nearly 80 miles away from Auburn.

*for* *Harry R. Van Cleave*  
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