



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Andrew A. Frederick

File: B-226637

Date: August 3, 1987

DIGEST

Where employee requested transfer to the Philadelphia area, agency properly determined that transfer was not in the interest of the government and denied his claim for relocation expenses. Fact that employee may have been well qualified for the vacancy to which he was transferred does not provide a basis for payment of relocation expenses. Moreover, the employee's initial impression that the government would pay his moving costs does not nullify the statutory prohibition against reimbursement in the case of a transfer primarily for the benefit or convenience of the employee.

DECISION

This decision is in response to a request from an authorized certifying officer of the National Park Service for a determination regarding the relocation expense entitlement of Andrew A. Frederick, a former Park Service employee.^{1/} We conclude that Mr. Frederick's claim for reimbursement of relocation expenses is not payable because the expenses were incurred in connection with a transfer which the Park Service has properly determined was primarily for his benefit.

BACKGROUND

Mr. Frederick began working for the National Park Service on March 6, 1983, at the Independence National Historical Park in Philadelphia, Pennsylvania. On October 14, 1984, he was transferred at government expense to the Colonial National Historical Park in Yorktown, Virginia. While occupying a

^{1/} This request was submitted by Arlene Tatigian, Regional Finance Officer, Mid-Atlantic Region, National Park Service, Department of the Interior.

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GS-5 position in Yorktown, Mr. Frederick's physicians concluded that environmental factors in the Tidewater, Virginia, area could be aggravating a physical ailment which he was experiencing and recommended that he be transferred elsewhere. In August 1985, Mr. Frederick approached officials at the Colonial and Independence Parks and asked for their assistance in arranging a lateral transfer to the Philadelphia area. Officials from both Parks advised that there was no comparable position available within the jurisdiction of the Independence National Historical Park. Ultimately, Mr. Frederick enlisted the assistance of the Regional Director, who arranged for his reassignment to a position at the same grade at the Edgar Allen Poe National Historic Site. According to Mr. Frederick, the Regional Director informed him that "everything was taken care of."

When Mr. Frederick inquired about moving arrangements for his anticipated transfer, he was advised that it was not the Park Service's obligation to pay for the move since it was at Mr. Frederick's request and primarily for his benefit. Notwithstanding this advice, Mr. Frederick has submitted a claim for relocation expenses totaling \$3,412.36. It is Mr. Frederick's understanding that these expenses are usually paid by the government when an employee transfers. It is his belief that, in denying his claim, the National Park Service has unfairly singled him out for harsh treatment. He cites his experience and training in the Independence National Historical Park's procedures as evidence that his transfer was of benefit to the government. He suggests that the inability of Park Service personnel in the Independence and Colonial Parks to locate a vacant position may have been due to his prior participation in a discrimination complaint. And, he refers to the Regional Director's assurance that "everything was taken care of" as giving him reason to believe the Park Service would pay his relocation expenses.

Analysis

The relocation expenses claimed by Mr. Frederick may be paid by the government only if authorized by the governing statutory provisions which are found in 5 U.S.C. §§ 5724 and 5724a. Section 5724, which governs the payment of travel and transportation expenses of a transferred employee, 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 18,000 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."

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, quoted above.

The cited statutory provisions are implemented by Part 2 of the Federal Travel Regulations (FTR), incorp. by ref., 41 C.F.R. § 101-7.003 (1985). As a condition to the government's payment of relocation expenses, FTR para. 2-1.3 requires a determination 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/her request. * * *"

Authority to make the determination as to whether a transfer is in the interest of the government rests primarily with the employing agency. This Office will not overturn the agency's determination in the absence of a showing that it is clearly erroneous, arbitrary or capricious. Norman C. Girard, B-199943, August 4, 1981. Decisions of this Office set forth guidelines to assist agencies in making the required determination. In our decision David G. Goodyear, 56 Comp. Gen. 709 (1977), we articulated the following three rules:


"[1] If an employee has taken the initiative in obtaining a transfer to a position in another location, an agency usually considers such transfer as being made for the convenience of the employee or at his request, [2] whereas, if the agency recruits or requests an employee to transfer to a different location it will regard such transfer as being in the interest of the Government. [3] Of course, if an agency orders the transfer and the employee has no discretion in the matter, the employee is entitled to reimbursement of moving expenses."

According to Mr. Frederick, it was he who initiated his transfer back to the Philadelphia area. Even though his transfer request was prompted by health considerations, the Park Service's determination that the transfer was at his request and primarily for his benefit would appear to be consistent with the above guidelines issued by this Office and not a matter of his being singled out for harsh treatment. Neither the fact that Mr. Frederick may have been well qualified for the position to which he was transferred nor the fact that he filled an existing vacancy dictates a different conclusion. Even where an employee is selected pursuant to a vacancy announcement issued under a merit promotion program, we have held that the resulting transfer is not necessarily in the interest of the government when the employee is transferred laterally to a position at the same grade without greater known promotion potential. Norman C. Girard, B-199943, supra. In the case where an employee transferred to a vacant position which the agency had been unable to fill due to a lack of qualified applicants, we held that the agency properly determined that a lateral transfer requested by the employee was primarily for the employee's benefit and not in the interest of the government. Carol B. McKenna, B-204881, May 15, 1984.

We have considered the effect of Mr. Frederick's reliance on the Regional Manager's assurance that "everything was taken care of" in initially assuming that the government would reimburse his relocation expenses. As noted previously, it appears that the agency specifically advised Mr. Frederick prior to the transfer that it would not pay his relocation expenses. However, even if his assumption to the contrary had been warranted, it would not provide a basis for reimbursement where the agency properly determined that the transfer was at the request or for the benefit of the employee. In such cases we have sustained the disallowance of relocation expenses even where an agency, in disregard of a specific regulatory requirement, failed to provide notice that transfer expenses would not be reimbursed. In Bernard F. Fernald, B-189201, supra, we held that the

agency's failure to give the employee notice of his responsibility for relocation expenses could not nullify the statutory prohibition against reimbursement by the government in the case of a transfer found to be primarily for the benefit or convenience of the employee.

Because his transfer was granted as an accommodation to Mr. Frederick and in response to his specific request, we hold that the National Park Service properly determined that his transfer was not in the interest of the government. We, therefore, sustain the Park Service's disallowance of his claim for relocation expenses.

for 
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