The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Kevin M. Cole - Relocation Contract Services - Retroactive Amendment to Orders

File: B-231099

Date: December 2, 1988

DIGEST

A transferred employee, whose travel orders did not authorize him to participate in his agency's relocation contract services program, requests that his travel orders be retroactively amended to permit such participation. The request is denied since under the Federal Travel Regulations, the employing agency exercised its discretion and established the written policy that only certain categories of its employees would be permitted to participate in the program.

DECISION

This decision is in response to a request from the General Counsel, Defense Mapping Agency (DMA). The question is whether a transferred employee may have his orders retroactively amended to provide for relocation contract services. We conclude that the orders may not be so amended, for the following reasons.

BACKGROUND

Mr. Kevin M. Cole, an employee with DMA, was selected for a grade GS-12 position under the agency's merit promotion plan, and he was transferred from St. Louis, Missouri, to Washington, D.C., in October 1987. His travel orders did not authorize him to participate in the agency's relocation contract services program.

Mr. Cole has been unable to sell his St. Louis residence, and he is encountering extreme difficulty maintaining two households. Mr. Cole has requested that an exception be made to the DMA policy governing relocation contract services so that he could participate.

The agency states that the DMA policy governing relocation contract services provides for only limited participation. Under that policy, the agency will provide assistance only

to Senior Executive Service employees, Performance Management and Recognition System employees, and those in other pay plans and grades who are relocated as a result of reductions in force, transfers of function, or involuntary reassignments. Although the agency admits that the policy fails to provide for situations like Mr. Cole's, the agency would like to rectify that oversight by simply amending his transfer orders retroactively to make him eligible for these services.

In that context, the agency states it recognizes the longstanding rule that travel orders may not be amended retroactively to increase or decrease an employee's entitlements, which have been fixed under statutes or regulations, after travel has been performed. Further, the agency also recognizes that an exception 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 had been omitted through error or inadvertence in preparing the orders.

Notwithstanding the above, the agency refers to our decision in Third Party Relocation Service Costs, B-223848, July 2, 1987. The agency in that case, the Veterans Administration (VA), authorized all of its employees to use relocation services, but only after the employees had been unable to sell their homes by themselves or through real estate agents. The DMA points out that although this decision does not discuss retroactively amending travel orders, the decision does state that these services are discretionary and are not entitlements. DMA argues that only entitlements come under the longstanding rule that travel orders may not be amended retroactively and, therefore, that Mr. Cole's travel orders can be amended to permit access to these services.

RULING

Section 5724c of title 5, United States Code (1982), provides that under regulations, federal agencies may enter into contracts to provide relocation services to transferring employees including, but not limited to, the making of arrangements for purchase of an employee's residence at his old duty station. The regulations implementing this section are contained in Part 12 of Chapter 2, Federal Travel Regulations (FTR), (Supp. II, Aug. 27, 1984), incorp. by ref., 41 C.F.R. § 101-7.003 (1987).

Paragraph 2-12.1 of the FTR provides in part:

> "2-12.1 Authority. . . . Agencies exercising this discretionary authority [to provide relocation services] shall carry out their responsibilities . . . within the guidelines of this directive. . . ."

And paragraph 2-12.3 of the same regulation provides:

> "2-12.3 Agency responsibilities. It is the responsibility of each agency head, or his/her designee, to determine whether, to what extent, and under what conditions relocation services will be made available to employees transferred within agencies and those transferred between agencies. This determination will be made based on an analysis of the agency's relocation needs, availability of funds, and in accordance with these guidelines."

Those guidelines go on to state in FTR, para. 2-12.4 that relocation services may be made available to all employees transferred in the interest of the government from one duty station to another after November 14, 1983, and excludes only a small group of persons, e.g. new appointees, from coverage.

Under authority of those regulatory guidelines, the VA decided to permit all their employees who were otherwise eligible to participate in the relocation services program, and the VA provided by agency regulation that all determinations of participation eligibility would be deferred until after the employees found they were unable to sell their homes. B-223848, supra.

In contrast, DMA's policy statement issued pursuant to FTR, para. 2-12.3 provides that participation in the program would be on a limited basis. For home sale services, DMA specified which categories of employees would be eligible. Thus, the agency, by making relocation contract services available only to a specifically limited group of employees, excluded all other DMA employees from coverage eligibility.

The agency argues that since relocation services are not an "entitlement," the ordinary rules governing retroactive amendment of orders would not apply and the agency could make discretionary determinations after transfers to authorize relocation services in individual cases as they saw fit.

We do not believe the orders can be amended as the agency proposes. The agency, by determining that only certain categories of employees would be permitted to participate, exercised the discretion authorized by the FTR. If the DMA policy statement had declared, for example, that all employees who are transferred in the interest of the government may be permitted to participate in the relocation services program on a case-by-case basis, we would have little difficulty with DMA's position. However, that is not the case. Under the DMA policy, Mr. Cole was not eligible for this benefit. Therefore, unless it can be shown that Mr. Cole's orders erroneously failed to place him in one of the specifically authorized categories listed in the DMA policy statement, it is our view that his travel orders may not be retroactively amended to permit him to participate in the program.

for Milton J. Socolar
Comptroller General
of the United States