B-256350

May 4, 1994

The Honorable Ken Calvert
Member, United States
House of Representatives
Suite 200
3400 Central Avenue
Riverside, California 92506

Dear Mr. Calvert:

We have received your letter dated January 14, 1994, enclosing correspondence to you from Mr. , , concerning his entitlement to be reimbursed for relocation expenses as a transferred employee incident to a short distance transfer of function by his employing agency.

According to Mr. , he was a civilian employee of the Air Force Audit Agency stationed at Norton Air Force Base near San Bernardino, California. His residence is in Cedar Pines Park, a distance of 24 miles and 35 minutes away. Subsequently, Norton Air Force Base was closed and Mr. employing activity was relocated to March Air Force Base in Moreno Valley, California, a distance of 19 miles from Norton Air Force Base. Mr. states that his commuting distance was increased to 45 miles and his commuting time was increased to more than 75 minutes.

By action of the Auditor General of the Air Force dated February 17, 1993, a determination was made that the relocation of civilian personnel from Norton Air Force Base to March Air Force Base did not qualify individual employees for permanent change-of-station entitlements. Mr. and others have appealed that determination through a number of command levels in the Air Force. Their appeals have been rejected each time.

Mr. now seeks to appeal those Air Force rulings to this Office. He argues that only the civilian employees of his activity were denied permanent change-of-station entitlements. He further argues that the agency ruling was based on an erroneous commuting area criteria in that Norton

Air Force Base is not in the Los Angeles commuting area, and that the Air Force determination in effect, was contrary to several decisions of this Office.

The principles governing short-distance relocations of transferred employees are contained in section 302-1.7(a) of the Federal Travel Regulation (FTR),[1] which provides guidelines for agencies to follow in order to determine whether relocation expenses shall be payable as incident to a change of official station. We have consistently held that this regulation does not establish fixed rules to be applied in all cases where the old and new duty stations are relatively close to each other. Rather, the regulation gives the agency broad discretionary authority to determine whether an employee's move from one residence to another is in fact incident to a change of official station.[2] That would include determinations concerning commuting patterns since the agency is in the better position to assess the situation at each of its installations.[3] Thus, unless an agency makes a positive determination of eligibility based on the various factors referred to in the regulation and relocation expenses are incurred, no basis for payment of a claim exists.[4]

With regard to the 10-mile criterion expressed in section 302-1.7(a) of the FTR, we have stated that it is not to be viewed as an inflexible benchmark.[5] As a general rule, we will not overturn an agency's determination on this issue in the absence of a showing that it was clearly erroneous, arbitrary, or involved an abuse of discretion.[6]

Mr. states that it was arbitrary for the agency to determine on a blanket basis that residence changes incident to the transfer would not be allowed at government expense. It is his view that it should be done on a case-by-case basis. We are not aware of any law or regulation which

---

[1] 41 C.F.R. § 302-1.7(a) (1993).

[2] , B-187162, Feb. 9, 1977; , B-217916, Aug. 26, 1985.

[3] , B-184029, Jan. 26, 1976; B-186711, Oct. 7, 1976; affirmed, B-186711, May 4, 1977.

[4] 51 Comp. Gen. 187 (1971); , B-207175, Dec. 2, 1982.

[5] , 67 Comp. Gen. 336 (1988).

[6] , supra, footnote 5.

requires that such determination may only be made on an individual-case basis. The location of an employee's residence and the distance he/she is willing to commute to his/her duty station is a matter of personal preference. According to Mr. 's statement, he chose to reside in a somewhat rural setting, 24 miles from his old official station. The fact that his commuting distance and travel time doubled because his employing activity was relocated a short distance from his old duty station in the opposite direction from his residence does not provide him with a right to relocate his residence at government expense.

We also point out that our decision , B-224631, Sept. 17, 1987, referred to by Mr. , does not support entitlement in his case. In , the agency adopted a 50-mile rule as a local commuting area for travel per diem entitlement outside the commuting area. When the agency used that same rule to establish a minimum distance to determine whether the distance between the old and new duty stations satisfied the criteria for a short distance transfer, we, in effect, concluded that it was improper for the agency to do so, since doing so permitted the agency to avoid having to make determinations of entitlement for short distances which were more than 10 miles. Since the documents supplied in Mr. 's case show that a positive determination of nonentitlement was made on a 19-mile short-distance transfer, our decision in has no application here.

Mr. argues that because military members at Norton Air Force Base were authorized to relocate at government expense, it was arbitrary not to grant the same benefit to the civilian employees as well. Unlike civilian employees of the government however, military members are on active duty 24 hours a day, 7 days a week. Since both Norton and March Air Force Bases are militarily controlled installations, Air Force policy may require that all military members must live either in base housing, if any, or within a specific time and distance radius from their respective duty sites. Generally, such requirements cannot be imposed on civilian employees at the same duty station.

With regard to Mr. 's argument that agency reference to Los Angeles as the general commuting area for Norton Air Force Base and March Air Force Base is erroneous because of the distance involved, we have no basis to challenge the validity of the agency statement. However, even if it is assumed that the reference was erroneous, such error could not be considered prejudicial, since it appears that the agency could have chosen a more proximal general area and made a similar determination.

Mr. also claims that the denial of entitlement was capricious because it overruled local agency determination that such move did qualify, and refers to a quotation in our decision , supra, footnote 2. We believe he has misunderstood the reference to the word "it" in connection with agency in that case. The word "it" as used therein, did not refer to the local agency activity or installation. The reference was to agency authority above the individual installation level which made determinations for its installations. Thus, in Mr. 's case, that would not be the Air Force Audit Agency activity at Norton Air Force Base. "Agency" in his case would be Headquarters, Air Force Audit Agency, which as previously noted, by determination by the Auditor General of the Air Force, dated February 17, 1993, ruled that individuals, such as Mr. , were not entitled to permanent change-of-station entitlements incident to the base closure and transfer of function to March Air Force Base.

We are sympathetic to Mr. 's situation and we regret that a more favorable reply cannot be made.

Sincerely yours,

Robert P. Murphy
Acting General Counsel

B-256350

DIGEST

An employee was involved in a short distance transfer because his duty station was being moved 19 miles. Since the move doubled his commuting distance and time, he and other employees sought to be relocated at government expense. The employee appeals the agency denial. Section 302-1.7(a) of the Federal Travel Regulation grants agencies broad discretion to determine employee relocation entitlements. Since there was no showing that the agency acted arbitrarily, capriciously, or contrary to law in their determination, no basis exists to overturn the determination made. To Congressman Ken Calvert, 43d District, California.