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United States
General Accounting Office
Washington, D.C. 20548

Office of the General Counsel

B-257519

July 11, 1995

Ms. Willie M. King
Director, Financial Management Division
U.S. Equal Employment Opportunity Commission
Washington, DC 20507

Dear Ms. King:

This responds to Mr. Theodore E. Ravas, Jr.'s May 17, 1994, appeal of our Claims Group's settlement Z-2869089, April 26, 1994, which sustained the Equal Employment Opportunity Commission's (EEOC) denial of Mr. Ravas's claim for part of a forfeited real estate earnest money deposit. Your office transmitted the appeal here on May 20, 1994, and although we agree with our Claims Group that the record presented does not allow reimbursement of Mr. Ravas's claim, for reasons explained below, we are returning the matter to the EEOC for further consideration.

The record shows that Mr. Ravas went to Detroit, Michigan, from Washington, DC, in October 1990, apparently on a temporary duty basis, to be the Acting Regional Attorney. Effective May 5, 1991, Mr. Ravas was appointed to the GS-15 Regional Attorney position in Detroit. At that time, in the interest of the government, his official duty station was transferred to Detroit. In October 1991, Mr. Ravas made a $5,000 earnest money deposit on a house he contracted to buy in the Detroit area. However, in November 1991, after discussions with EEOC's General Counsel, he was reassigned back to the Office of General Counsel in Washington to a GS-14 position, effective December 15, 1991. In a memorandum to Mr. Ravas dated December 4, 1991, advising him of the reassignment, the Associate General Counsel stated: "[f]or the convenience and benefit of the Commission, we are granting your request of November 21, 1991, that you be reassigned" to Washington. The Associate General Counsel also described it as a "transfer" for which "we will support a request that you be given PCS (permanent change of station)." During the period of his employment in Detroit, Mr. Ravas's family did not move to Detroit, but remained in the family residence in the Washington area.

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After an unsuccessful attempt to obtain a refund of the $5,000 earnest money deposit he made in Detroit, Mr. Ravas filed a claim with the EEOC for reimbursement of that amount. By memorandum of June 9, 1993, you advised Mr. Ravas that his claim was being allowed as a miscellaneous expense and he was being reimbursed on that basis for the maximum amount ($2,386.40) payable for a miscellaneous expense allowance incident to his transfer from Washington to Detroit in May 1991.[1]

By memorandum of July 15, 1993, the Associate General Counsel submitted a travel authorization to your office to cover Mr. Ravas's reassignment back to Washington in December 1991 so that Mr. Ravas could recover the balance of the real estate deposit as a miscellaneous expense incident to his reassignment back to Washington. However, by memorandum of September 2, 1993, you notified Mr. Ravas that the claim

> ". . . cannot be processed at this time because it was not authorized or approved in accordance with the procedures outlined in EEOC Order 345.001, Travel Handbook. No funds were committed or obligated for the PCS; no vacancy announcement was posted; the authorization was not submitted through the proper channels for appropriate PCS signature approvals, and the authorization is after the fact."

Subsequently, you submitted Mr. Ravas's claim to our Claims Group for settlement. In doing so, you advised the Claims Group of the reason for disallowing the claim and noted that EEOC regulations require that a PCS authorization not be granted if the transfer is for the benefit or convenience of the employee and that EEOC's Office of General Counsel does not have authority to authorize or approve reimbursement for PCS expenses.

Our Claims Group, agreeing with you that this move may not be authorized as a move in the interest of the government, denied the claim. However, it is not clear to us in our review of the record on appeal that you had actually made the determination that the move was not in the interest of the government. To clarify the matter, we telephoned Ms. Elaine Harrison of your staff on September 27, 1994, who advised us that EEOC officials with the authority to approve transfers in the interest of the government had not yet made a determination whether this transfer was in the interest of the government and that no attempt had been made to correct the procedural infirmities stated in your September 2, 1993, memorandum referred to above.

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[1]Two weeks' basic pay at the GS-13, step 10 rate, the maximum payable for an employee with family. 5 U.S.C. § 5724a(b).

As the Claims Group pointed out, for an employee's relocation expenses to be reimbursed, the transfer must have been "in the interest of the government," and such expenses may not be allowed if the transfer is made "primarily for the convenience or benefit" of the employee, or "at his request." 5 U.S.C. § 5724(a) and (h).[2] We long have held that the determination of whether a transfer is in the interest of the government is primarily a matter within the discretion of the employing agency, and we will not disturb the agency's determination unless it is arbitrary, capricious or clearly erroneous under the facts of the case. Julia R. Lovorn, 67 Comp. Gen. 392 (1988), and decisions cited therein. In view of the unusual circumstances of this case, we are returning Mr. Ravas's claim to the EEOC and request that it be referred to an agency official who has the authority to make determinations regarding transfers for the benefit of the government. That official should then review the matter in the context of Mr. Ravas's discussions with the general counsel, and consider whether Mr. Ravas was selecting from alternatives dictated by the general counsel primarily for the benefit of the EEOC or whether he was voluntarily requesting a transfer primarily for his own benefit.

In making a determination in this case, the agency official should take into consideration that when an employee has initiated his own transfer to a position involving a lateral transfer or a down-grade to a position of no greater promotion potential than the old position held, or where the new position reassignment did not result from competitive selection under a vacancy announcement, such as occurred in this case, an agency properly may conclude that the transfer is primarily for the benefit of the employee. See e.g., John J. McCracken, B-241216, Feb. 14, 1991, cited by our Claims Group. See also, Josef D. Prall, B-191482, Nov. 7, 1978. As noted, however, such determinations are primarily for the agency to make considering the individual circumstances of the case. The fact that a transfer also serves the employee's personal needs would not preclude a determination that the transfer was in the government's interest. 54 Comp. Gen. 892, 894 (1975).

Should the EEOC determine that Mr. Ravas's reassignment from Detroit to Washington was in the interest of the government, and not primarily for his own convenience or benefit, or at his own request, Mr. Ravas would be entitled to a miscellaneous expense reimbursement, but the amount of the reimbursement must be limited to the amount payable for an employee without family, since his family remained in the family residence near Washington during the time he relocated from Washington to Detroit and back. See Patsy S. Ricard, 67 Comp. Gen. 285

[2]See also Federal Travel Regulation, § 302-1.3(a)(i).

(1988); and B-163076, Jan. 12, 1968. This also applies to the miscellaneous expense payment for the transfer from Washington to Detroit, as the Claims Group stated.[3]

If the EEOC determines that the reassignment from Detroit to Washington was not in the interest of the government, or that Mr. Ravas requested the transfer, and it was primarily for his own convenience or benefit, Mr. Ravas would not be entitled to receive a miscellaneous expense payment for that transfer. Also, as the Claims Group determined, Mr. Ravas would not be entitled to a miscellaneous expense payment for a forfeited real estate deposit incident to his prior transfer from Washington to Detroit. It was the fact of his reassignment and not the original transfer to Detroit that caused the forfeiture. See Marvin K. Eilts, 63 Comp. Gen. 93 (1983). The forfeiture cannot be claimed as a miscellaneous expense unless the forfeiture resulted from the government's action. Marvin K. Eilts, supra; and Nathan F. Rodman, 64 Comp. Gen. 323 (1985).

Accordingly, the matter is returned to the EEOC for consideration of whether Mr. Ravas's reassignment from Detroit to Washington was in the interest of the government and so it may take the appropriate financial action, as described above, on the claim. By separate letter dated today to Mr. Ravas, enclosing a copy of this letter, we are advising Mr. Ravas of this action.

Copies of our decisions cited above are enclosed for your convenience.

Sincerely yours,

Robert P. Murphy
General Counsel

Enclosures

[3]Since Mr. Ravas has already been paid the maximum miscellaneous expense amount for an employee with family, the difference between his payment and entitlement was an erroneous payment subject to consideration for waiver under 5 U.S.C. § 5584.