Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Stephen P. Atkinson—Relocation Expenses—Household Goods Moving Expenses—Common-Law Spouse

File: B-260688

Date: October 23, 1995

DIGEST

1. An agency authorized the shipment of a transferring employee's household goods (HHG) by the actual expense, or government bill-of-lading (GBL) method, under which the government assumes the responsibility of making the arrangements to ship the employee's HHG. However, the employee chose to ship his HHG himself and subsequently submitted a claim for reimbursement based on the commuted rate method, under which employees who ship their own HHG are reimbursed according to the commuted rate allowances prescribed in a schedule published by the General Services Administration. The applicable regulation provides that when an agency authorizes the shipment of an employee's HHG by the GBL method and the employee then chooses to make his own arrangements for the shipment of his HHG, the employee's reimbursement is limited to his out-of-pocket expenses. 41 C.F.R. § 101-40.203-2 (1994). See also John S. Phillips, 62 Comp. Gen. 375 (1983).

2. For the purpose of claiming relocation allowances incident to his transfer, an employee asserts that a woman and her three children are members of his immediate family by virtue of his common-law marriage to the woman. Issues of marital status are determined by state law. In this case, the applicable state law (Colorado) requires clear, consistent and convincing evidence of conduct that manifests the parties' intent to establish a marital relationship. The record in this case is insufficient to meet this test since the only evidence purporting to show the couple's marital relationship is a copy of a Federal income tax form they filed jointly as a married couple and two health insurance forms showing that the employee's insurance company paid a bill for the woman and a bill for one child under the employee's account.

DECISION

An authorized certifying officer requests an advance decision concerning certain relocation claims submitted by Mr. Stephen P. Atkinson, an employee of the Bureau

of Reclamation, U.S. Department of the Interior, incident to his permanent change-of-station transfer in October 1994 from Denver, Colorado, to Red Bluff, California. The certifying officer asks two separate questions. First, what is the proper method of reimbursement to Mr. Atkinson who was authorized shipment of his household goods by the actual expense method via a government bill of lading (GBL) but chose to personally move his household goods? Second, the agency asks whether Mr. Atkinson's putative common-law wife and her children may be considered members of his immediate family for the purpose of relocation allowances.

Reimbursement for household goods moving expenses

Generally, the shipment of an employee's household goods is accomplished by either of two methods. Under the so-called actual expense or GBL system, the government assumes the responsibility of making the arrangements for the transportation of the employee's household goods under a GBL and pays the carrier directly. Federal Travel Regulation (FTR) 41 C.F.R. § 302-8.3(b). Under the commuted rate system, the employee arranges his own transportation and is reimbursed according to the commuted rate allowances prescribed in the Commuted Rate Schedule published by the General Services Administration (GSA). FTR § 302-8.3(a).

In the present case, the agency states that, in accordance with applicable regulations, it has limited Mr. Atkinson's reimbursement for moving his household goods to his actual out-of-pocket costs. However, it asks whether this is correct in view of earlier decisions of this Office that held that employees who moved their own household goods were entitled to the full commuted rate allowance. See William K. Melanize, B-181156, Nov. 19, 1974, which is cited by the agency. However, effective December 30, 1980, GSA adopted regulations providing that when the agency determines that the GBL method is to be used to ship an employee's household goods, if the employee subsequently chooses to move the household goods by some other means, his reimbursement is limited to his out-of-pocket expenses, not to exceed the maximum amount the government would have incurred had the goods been moved via the GBL. Those regulations remain in effect. 41 C.F.R. § 101-40.203-2. In John S. Phillips, 62 Comp. Gen. 375 (1983), we announced that decisions following the contrary rule issued before the effective date of this regulation (such as Melanize, supra) would no longer be followed.

Accordingly, the agency was correct in limiting Mr. Atkinson's reimbursement for moving his household goods to his out-of-pocket expenses, not to exceed the amount the agency would have incurred had the goods been moved via GBL.

Status of Mr. Atkinson's putative spouse and her children

Mr. Atkinson claimed a spouse and her three minor children as his immediate family members on his travel vouchers for travel and temporary quarters subsistence expenses reimbursement based on his assertion that he and the woman have a common-law marriage. Pursuant to 5 U.S.C. §§ 5724 and 5724a, such allowances are payable for the expenses of a transferred employee's immediate family, who are defined in FTR § 302-1.4(f), to include the employee's spouse and children of his spouse who are members of the employee's household at the time he reports for duty at the new duty station.

To support his assertion that he and his spouse are married by common law, Mr. Atkinson states that in June 1994 he checked with a clerk of the court's office and an attorney in Colorado, where he then resided, who told him that if he presents himself as married, he is considered married in Colorado, and other states would then be obligated to recognize the marriage also. Mr. Atkinson has provided a copy of a joint 1994 Federal income tax return he and his putative spouse filed as husband and wife and on which the three children are listed as his step-children. He also included copies of health insurance forms showing that his health insurance paid the expenses incurred for medical care provided to the spouse on July 2 and 5, 1994, in Colorado, and on December 2, 1994, in California, and to one of the children on August 21, 1994, in Colorado. These forms, however, do not state Mr. Atkinson's relationship to the woman or the child.

Issues of marital status are determined by state law. Connie P. Isaac, B-247541, June 19, 1992. Although California, the location of Mr. Atkinson's new duty station, has abolished the contracting of common-law marriages, it does recognize common-law marriages legally contracted in other states. Elden v. Sheldon et al., 758 P.2d 582 (Cal. Sup. Ct. 1988). The issue in Mr. Atkinson's case, then, is whether he contracted a valid common-law marriage in Colorado prior to reporting for duty in California so that his putative wife and her children qualified as members of his immediate family for the relocation expenses he claims on this basis. The burden of proof is on the claimant, Mr. Atkinson, to establish his entitlement to the benefits he claims. 4 C.F.R. § 31.7.

In Colorado, a couple may establish a common-law marriage by mutual consent or agreement to be husband and wife, followed by mutual and open assumption of a marital relationship. People v. Lucero, 747 P.2d 660 (Colo. Sup. Ct. 1987). Conduct in a form of mutual public acknowledgement of the marital relationship is essential to the establishment of a common-law marriage. Id. The Colorado courts have

held that the two factors that most clearly show an intention to be married are cohabitation and a general understanding or reputation among persons in the community that the parties hold themselves out as husband and wife. Id. Although any evidence that openly manifests the intention of the parties to establish a marital relationship is relevant, the types of behavior that may be considered include maintenance of joint banking and credit accounts, purchase and joint ownership of property, the use of the man's surname by the spouse and the filing of joint tax returns. Id. This evidence "should be clear, consistent and convincing." Id. at 664 n.6, quoting Employer's Mutual Liability Insurance Co. of Wisconsin v. Industrial Commission, 234 P.2d 901, 903 (Colo. Sup. Ct. 1951).

The record before us does not meet these requirements. There is no "clear, convincing and consistent" evidence of a mutual and open assumption of a marital relationship in Colorado by Mr. Atkinson and his putative spouse. The record contains only Mr. Atkinson's statement that in June 1994 he was told that in Colorado if he presents himself as married, he is married. There is no showing that Mr. Atkinson and his putative spouse mutually agreed to be husband and wife and mutually and publicly held themselves out as husband and wife while living in Colorado.

Mr. Atkinson's documentary evidence in support of his claim shows that his health insurance company paid a claim under his account for one instance of medical service provided to one of his putative spouse's children in Colorado (prior to his relocation), and that it paid claims for medical service provided to his putative spouse twice in Colorado and once in California (after his relocation). The insurance payments for the three instances of care in Colorado provide only limited evidence secondarily related to Mr. Atkinson's marital status while in Colorado. The latter payment relates to an instance of care provided in California, several months after he had moved from Colorado. The copy of the joint 1994 Federal income tax return, filed in February 1995, shows that Mr. Atkinson and his putative spouse filed as a married couple, but that is evidence only that Mr. Atkinson filed his return jointly and not that he has established the validity of the marriage.

In addition, no information is provided as to the status of any previous marriages by either party. Dissolution of any previous marriage, prior to the contracting of the common-law marriage, would be necessary to establish that the party was eligible to enter into the subsequent marriage.

Therefore, we find that the evidence of record is insufficient to clearly establish the existence of the marriage on which Mr. Atkinson bases his claims for the travel and temporary quarters expenses of his putative spouse and her children. Accordingly, on the present record, we may not approve payment of those claims.[1]

/s/Seymour Efros
for Robert P. Murphy
General Counsel

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[1]Where there is substantial doubt as to the factual basis for a claim, it is the longstanding rule of the accounting officers of the government to deny the claim and leave the claimant to pursue the matter in a court of competent jurisdiction which is better equipped to resolve such factual questions. See John C. Eastman, B-246538.4, Mar. 18, 1994, and decisions cited therein.