Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: William R. Lenderking

File: B-261878

Date: March 6, 1996

DIGEST

An employee must complete 1 year of service following transfer to qualify for reimbursement of relocation expenses unless, as determined by the agency, circumstances exist that are beyond the control of the employee and acceptable to the agency. 5 U.S.C. § 5724(i) (1994). Our Office will not overturn agency findings in such cases unless we find them to be arbitrary or capricious. Where employee accepted transfer with knowledge that he would be involuntarily retired in 3 months, agency's determination that he is not entitled to relocation expenses is not arbitrary or capricious.

DECISION

Mr. James Q. Kohler, Jr., Chief, Financial Operations Division, United States Information Agency, requests an advance decision on the entitlement of Mr. William R. Lenderking to relocation allowances in connection with his reassignment to Washington, D.C. We hold that he is not entitled to relocation allowances.

BACKGROUND

In June 1992, Mr. Lenderking, a Career Minister Counselor for the United States Information Agency (USIA), was transferred from Islamabad, Pakistan, to Miami, Florida, for a 2-year assignment as diplomat in residence and senior research associate at the North-South Center of the University of Miami. By letter dated November 5, 1993, USIA's Personnel Director notified Mr. Lenderking that he was being retired effective August 31, 1994.[1] Mr. Lenderking was granted an extension of his retirement date to September 29, 1994, to accommodate his participation in the agency's career transition program. By Travel Authorization T4-2770, dated

[1]See USIA Manual of Operations and Administration, MOA-VB, paragraph 742.2—Mandatory Retirement for Expiration of Time-in-Class (TIC).

March 23, 1994, he was transferred from Miami, Florida, to Washington, D.C., to attend the career transition program, effective June 27, 1994.

Mr. Lenderking was told by USIA that expenses would not be paid if he attended the program. Mr. Lenderking was transferred and received full salary but no expense allowance for the duration of the program. A prerequisite to entering the career transition program is the execution of a retirement agreement. This agreement indicated his separation would be effective in 3 months, on September 29, 1994. Mr. Lenderking did not execute an agreement to remain in government service for 1 year following the transfer, normally a prerequisite to qualifying for relocation expense reimbursement.

Mr. Lenderking submitted a travel reimbursement voucher in the amount of $33,332.48, which includes a claim for $32,434.00 for real estate transaction expenses for the sale of his residence in Coral Gables, Florida. Mr. Lenderking contends that he is entitled to be reimbursed for residence transaction expenses for the sale of his residence since he had received residence transaction expenses for the purchase of the residence when he transferred to Florida in 1992. He also contends that, since his retirement was mandatory, it was for reasons beyond his control and, hence, that he should qualify for relocation allowances.

The USIA states that it has consistently interpreted the phrase "beyond his control" as applying to situations where separations occur without warning, such as reduction-in-force or sudden medical disability retirements. The USIA advises that where an employee is given several months notice of Time-in-Class (TIC) Mandatory Retirement, it does not deem such a retirement to be an acceptable reason beyond the employee's control that would qualify him for relocation allowances.

The USIA certifying officer requests a decision as to whether Mr. Lenderking should be reimbursed relocation allowances as authorized under 5 U.S.C. § 5724(a), 6 FAM, and 41 C.F.R. Part 302.

ANALYSIS AND CONCLUSION

The payment of travel, leave, and other benefits for members of the Foreign Service is authorized under 22 U.S.C. § 4081 (1995) as implemented by regulations contained in the Foreign Affairs Manual (FAM). 6 FAM § 148.1 provides for a Domestic Relocation Allowance for personnel transferred within the United States. This allowance is intended to permit reimbursement of expenses incident to domestic relocation incurred by foreign service personnel for which other government employees are reimbursed under 5 U.S.C. § 5724(a). Before any obligation of government funds is incurred, 6 FAM § 148.5 provides that an

employee must have executed a 1-year service agreement.[2] The statutory basis for the requirement is found in 5 U.S.C. § 5724(i) (1994) which provides that an agency may pay transfer expenses only after:

> "the employee agrees in writing to remain in the Government service for 12 months after his transfer, unless separated for reasons beyond his control that are acceptable to the agency concerned."

The critical element in the statutory requirement is the service obligation, not the service agreement per se. Thus, we have ruled that the 12-month service obligation in the statute and the FTR is a statutory condition precedent to payment of relocation expenses incident to a transfer and that an employee was bound by the service obligation even though she did not execute a service agreement. Cathryn P. White, B-195180, Oct. 24, 1979, and B-188048, Nov. 30, 1977. In another decision, we allowed reimbursement of previously incurred expenses even though the transfer was canceled and the employee did not execute a service agreement because the employee remained in government service for 12 months and thus satisfied the service obligation in 5 U.S.C. § 5724(i). Orville H. Myers, 57 Comp. Gen. 447 (1978). See also Thomas D. Mulder, 65 Comp. Gen. 900 (1986).

The resolution of the issue presented, therefore, turns on the 12-month service requirement imposed as a statutory condition by 5 U.S.C. § 5724(i). Mr. Lenderking can escape from this obligation only if he was separated for reasons beyond his control and acceptable to the USIA.

We have held that the determination as to whether an employee's separation from the service is for a reason beyond his control and acceptable to the agency concerned must be made by the employing agency. We will not overturn the agency's determination unless it is shown to be arbitrary and capricious. William C. Moorehead, 56 Comp. Gen. 606 (1977) and Arnold M. Biddix, B-198938, Mar. 4, 1981.

The USIA contends that it consistently interprets the phrase "beyond his control" as referring to situations that occur without warning to the employee. Mandatory retirement for TIC requires at least 6 months advance notice and a 60-working-day limit for filing an appeal of the retirement notice. MOA-VB § 742.6. As stated above, Mr. Lenderking was notified more than 4 months prior to the date of his travel authorization that he was being involuntarily retired and that he would not be paid expenses if he attended the program. He nevertheless chose to attend the

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[2]The specific provisions for entitlement to residence transaction expenses in § 148.6-5 refer to section 302-6.1 of the Federal Travel Regulation (FTR) (41 C.F.R. § 302-6.1 (1995)), which requires the execution of a 1-year service agreement, as prescribed in 41 C.F.R. § 302-1.5.

3-month program at full salary and was granted a 1-month extension of his retirement date.

Although in our opinion a mandatory retirement is beyond the control of the employee, we believe the agency's determination must be viewed in the context of the purpose of 5 U.S.C. § 5724(i). As noted above, a 12-month period of service is a statutory requirement for payment of relocation expenses; an employee is bound by the service obligation whether or not a service agreement is executed.

For this reason, we believe that the phrase "reasons beyond his control" in section 5724(i) contemplates reasons that arise after the execution of an agreement to serve at least 12 months in the new location or after the transfer of station occurs. In our view, the concept of "beyond control" has meaning only within the context of an effort to carry out a 12-month service obligation. Here, Mr. Lenderking knew before his transfer was authorized that he would be serving no more than 3 months in the new location. Hence, he could not have agreed to serve 12 months; nor could he actually have served 12 months. His situation thus falls outside the acceptable reasons contemplated by the statute, and he therefore cannot qualify under it.

We note also that Mr. Lenderking sought advice in advance on the issue of his relocation expenses, and was told they could not be covered. The agency's established rule is that it does not cover such expenses. Under these circumstances, we cannot conclude that USIA's determination is arbitrary or capricious. Accordingly, we concur in USIA's denial of Mr. Lenderking's claim for relocation allowances.

/s/Lowell Dodge
for Robert P. Murphy
General Counsel