Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Michael R. Coulter

File: B-272711.2

Date: December 17, 1996

DIGEST

The FAA erroneously authorized relocation expenses for an employee on his transfer from old Denver Stapleton Airport to new Denver International Airport, even though the airports are only 17 miles apart. After issuing travel orders and paying employee's voucher for expenses incurred, FAA determined that he was not entitled to expenses and seeks repayment of the expenses paid. Employee's request for waiver of the debt is granted. Before incurring expenses, employee questioned officials as to his eligibility, both before and after issuance of orders, and was repeatedly assured that he was eligible for relocation benefits. GAO finds that he incurred the expenses in good faith reliance on his travel orders and was without fault in accepting payments for those expenses.

DECISION

This decision is in response to one of 29 requests forwarded to us by the Manager, Financial Policy and Administrative Branch, Office of Financial Services, Federal Aviation Administration (FAA), U.S. Department of Transportation (DOT), for waiver of erroneous payments of relocation expenses and allowances in connection with the relocation of FAA employees to the new Denver International Airport. This particular claim concerns an FAA employee, Michael R. Coulter, whose claim for waiver of repayment of over $19,000 in erroneous payments made to him in reliance on his permanent change of station (PCS) orders was denied by FAA officials. The denial was based on findings of the DOT Office of Inspector General and the office of the FAA Chief Financial Officer, concluding that the employee's PCS move resulted in the employee having an increased commuting time and distance.

BACKGROUND

Mr. Coulter is employed by the FAA as an Air Traffic Control Specialist in Denver, Colorado. In October 1993, the new Denver International Airport was scheduled to open, and, in anticipation of this opening, Mr. Coulter received travel orders authorizing him to make a PCS move in connection with his transfer from Denver's

old Stapleton Airport to the new Denver International Airport, even though the airports were only 17 miles apart. Mr. Coulter states that "everyone else in the facility" also received similar orders.

After receiving the orders, Mr. Coulter states he began asking questions to anyone and everyone in management whether he was eligible for the move because he was concerned that the interpretation he and others were getting would not be valid. The employee amply demonstrates in the record that FAA officials confirmed his eligibility for a PCS move both before and after his receipt of travel orders authorizing relocation expenses. Moreover, his relocation expense voucher, submitted after he incurred the expenses, was approved and paid in the total amount of $19,028.74. The employee does not dispute the subsequent finding of the agency's Office of Inspector General and the FAA Chief Financial Officer that his PCS move resulted in an increased time and distance of his commute to the new station.

In 1994, after the airport had opened, DOT's Office of Inspector General conducted an audit to determine whether FAA had adequate controls to ensure that the PCS moves involving Mr. Coulter and similarly situated employees were necessary or cost effective. The audit report evaluated FAA policies, procedures, and practices, and found that FAA did not have adequate controls to ensure that the short-distance PCS moves were necessary, cost effective, and in the best interest of the government. Among other things, the report recommended that FAA cancel all proximity travel orders at Denver and instruct managers to conduct a case-by-case review of all future moves at this location to ensure that each move is in the best interest of the government, is justified to resolve an unreasonable commute, and results in a relocation of residence which is incident to the transfers. The report identified 22 ineligible PCS moves at Denver and recommended that amounts already paid to these employees be recovered. See Management Controls Over Employee Relocations Federal Aviation Administration, Report No. AS-FA-6-001, October 27, 1995 at pages 10, 15-16.

The FAA concurred with these recommendations and, in addition, the FAA Chief Financial Officer identified additional employees whose PCS moves were determined to be ineligible. Thus, Mr. Coulter is one of 29 employees determined by the agency to be ineligible for a PCS move. All 29 employees have requested waiver of their debts.

ANALYSIS

The Comptroller General's authority to waive collection of overpayments of travel, transportation, and relocation expenses is found at 5 U.S.C. § 5584 (1994). Under this statute, waiver is authorized only where the collection of the overpayment "would be against equity and good conscience and not in the best interests of the

United States" and there is no indication of "fraud, misrepresentation, fault, or lack of good faith" on the part of the employee. "Fault" is considered to exist if it is determined that the employee exercising reasonable diligence should have known that an error existed, but failed to take corrective action, and the standard employed is whether a reasonable person should have been aware of receiving payment in excess of the proper entitlement. 4 C.F.R. § 91.5 (1995); Beverly J. Ladmirault, B-261303, Oct. 23, 1995; Matter of George R. Beecherl, B-192485, Nov. 17, 1978.

In 1985, Public Law 99-224, 99 Stat. 1741, extended waiver authority under 5 U.S.C. § 5584 to include erroneous payments of travel, transportation, and relocation expenses. In the legislative history of this amendment, at page 2 of House Report No. 102, 99th Cong., 1st Sess. (May 15, 1985), reprinted in 1985 U.S. Code Cong. & Ad. News 2659, 2660, the following statement expressed GAO's concerns about claims arising from erroneous agency authorizations on which an employee relies in good faith to his detriment:

> ". . . GAO's experience demonstrates that hardship has been caused in many travel, transportation, and relocation cases and that employees have been required to make substantial refunds to the Government as a result of circumstances which were not their fault. This is particularly true when, as the General Accounting Office has found, many of these claims arise from erroneous agency authorizations which an employee relies on in good faith to his detriment."

We believe that the present case of the 29 FAA employees illustrates the concerns we expressed in 1985. The Office of Inspector General's Audit Report, cited above, amply demonstrates that the erroneous authorizations of PCS moves were the result of the failure of FAA management to have adequate controls in place to ensure that the moves were proper and necessary. For example, the Denver Air Traffic manager stated that he was instructed by regional management staff to sign PCS travel orders, but not to discuss or review moves for compliance with requirements. Also, accounting staff responsible for reviewing PCS vouchers stated that they believed employees qualified for PCS allowances, except purchase cost of new residence, even if they only moved a short distance or farther away from the new duty station. OIG Audit Report, supra, p. 15.

In the instant case, there is nothing in the record to suggest that Mr. Coulter was at fault in accepting the erroneous payments for relocation expenses. Mr. Coulter states, and the FAA does not dispute, that he took the initiative on numerous occasions to discuss his relocation benefits with authorized officials who informed him time and time again that he was eligible for these benefits. Furthermore, FAA

issued official travel orders authorizing house sale and purchase expenses, and nothing in the record suggests that the employee was at fault in accepting the erroneous payments made to him for his relocation expenses. Thus, we do not agree with FAA's apparent conclusion that, even after receiving official advice on numerous occasions and official PCS orders and questioning them after their issuance, the employee had the responsibility to review the applicable regulations to determine whether he was eligible for relocation expenses. Mary F. Lopez, B-236856, Dec. 15, 1989. Rather, it appears reasonable to assume that Mr. Coulter relied on the erroneous travel authorization and assurances in incurring the relocation expenses claimed. Further, we find nothing in the record to indicate any fraud, misrepresentation, fault, or lack of good faith on Mr. Coulter's part since it was reasonable for him to proceed in reliance on the erroneous travel orders.

As a general rule, we presume that an employee who incurs expenses erroneously authorized by travel orders has done so in reliance on the orders. John B. Osborn III, B-231146, March 10, 1989. See also Matter of Maj. Kenneth M. Dieter, 67 Comp. Gen. 496 (1988), and Matter of Rajindar N. Khanna, 67 Comp. Gen. 493 (1988). We believe that this rule applies to Mr. Coulter and that he did expend funds in reliance on his orders.

For the reasons discussed above, we find that the collection of the erroneous relocation expenses paid to Mr. Coulter would be against equity and good conscience and not in the best interests of the United States. Accordingly, under 5 U.S.C. § 5584, as amended, we waive repayment of the debt of $19,028.74 for relocation expenses which Mr. Coulter owes to the FAA since this debt was incurred to cover the relocation expenses erroneously authorized, and the employee actually spent funds in good faith reliance on erroneous travel orders.

We remand the other cases to FAA to be decided in accordance with this determination.

Robert P. Murphy
General Counsel