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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548**

FILE: B-197816

DATE: June 24, 1981

MATTER OF: Richard J. Hughes - Failure to Transfer
After House-Hunting Trip

DIGEST: Employee declined transfer after house-hunting trip, contending wife couldn't tolerate climate of new duty station because of allergies. If reason for declination was in fact beyond employee's control and acceptable to agency, GAO will not object to agency's payment of expenses of house-hunting trip. However, whether or not reason meets this test is primarily for determination by agency and GAO will not disturb agency's decision unless clearly erroneous, arbitrary or capricious.

This action is in response to a request for an advance decision from M.E. Smith, Accounting and Finance Officer, Defense General Supply Center, Defense Logistics Agency, concerning the propriety of seeking repayment of a travel advance which was issued to Mr. Richard J. Hughes for a house-hunting trip. This matter was submitted at the request of Mr. Hughes, was forwarded to this Office through the Office of the Comptroller of the Defense Logistics Agency, and has been assigned control number 80-9 by the Department of Defense Per Diem, Travel and Transportation Allowance Committee.

The record indicates that on June 14, 1979, an authorization was issued and approved for a change of the permanent station of Mr. Hughes from Columbus, Ohio, to Richmond, Virginia. In order to seek a permanent residence at his new duty station, Mr. Hughes went on an authorized house-hunting trip to Richmond from July 14 through 19, 1979. He received a \$460 travel advance for this purpose.

[Claim for Reimbursement of House-Hunting Trip Expenses]

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Upon returning to Columbus, Mr. Hughes revealed that he would not be able to transfer because his wife's allergy condition prevented her from living in a high humidity area such as Richmond. Subsequently, his transfer to Richmond was cancelled and in August 1979, Mr. Hughes was transferred to Battle Creek, Michigan. He was not granted a house-hunting trip in order to obtain housing in Battle Creek.

The agency presently seeks to be reimbursed for the travel advance paid to Mr. Hughes as he did not accept his transfer to Richmond. The agency maintains that the medical evidence submitted by Mr. Hughes does not clearly establish that Mrs. Hughes could not reside in Richmond, and even if this fact was established, it would be still required to seek reimbursement of the travel advance.

Section 5724(a)(2) of title 5 of the United States Code authorizes an employee reimbursement of travel expenses to seek permanent quarters at the new official station when both the old and new stations are located within the continental United States. The pertinent parts of the implementing Federal Travel Regulations (FTR), are found in paragraphs 2-4.3(a) and 2-1.5a(1)(a). Paragraph 2-4.3(a) provides:

"a. After employee's agreement to transfer. A trip for finding residence quarters shall not be permitted at Government expense until after an employee has agreed to the transfer and the date of the transfer has been established, and shall not be authorized under circumstances where a purpose of the trip is to permit the employee to decide whether he will accept the transfer. If an employee accepts a transfer and, after making a trip to the new station for the purpose of finding permanent quarters or after the spouse has

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made such a trip, declines the transfer, he is subject to the provisions of 2-1.5a(1) concerning recovery of amounts reimbursed for travel."

Paragraph 2-1.5a(1)(a) provides:

"(a) Transfers within the conterminous United States and appointments and assignments of new appointees and student trainees to certain positions within the 50 States and the District of Columbia. In connection with the transfer of employees between official stations within the conterminous United States, expenses for travel, transportation, moving and/or storage of household goods, and allowances as provided in these regulations shall not be allowed unless and until the employee selected for such transfer agrees in writing to remain in the service of the Government for 12 months following the effective date of transfer, unless separated for reasons beyond his control and unless acceptable to the agency concerned. In case of violation of such an agreement, including failure to effect the transfer, any funds expended by the United States for such travel, transportation, and allowances shall be recoverable from the individual concerned as a debt due the United States." (Emphasis added.)

As this Office construes the foregoing statute and regulations, it would not object to the employing agency's payment of the authorized expenses of Mr. Hughes' house-hunting trip to Richmond, provided it be determined that his failure to comply with the required service continuation agreement -- in this case failure to transfer -- was in fact solely for a reason beyond his control and acceptable to the agency. However, whether or not his reason meets this test is primarily for determination by the agency

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and this Office will not disturb the agency's decision in this regard unless it is clearly erroneous, arbitrary, or capricious. William C. Moorehead, 56 Comp. Gen. 606, 607 (1977).

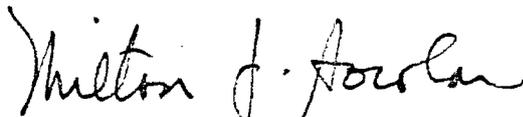
In this connection see B-142286, April 8, 1960. In that case an employee had moved his family and household goods to a new permanent duty station but before he reported for duty his wife became seriously ill and it was necessary for the employee and his family to move back to the old duty station. Here there apparently was no doubt that the illness of the wife was the sole reason for not completing the transfer. While the employee was required to pay the expenses of returning to the old duty station, this Office concurred in the agency's view that the declination of the transfer was for a reason beyond the employee's control and that he should be paid for the travel and transportation expenses to the new duty station. But see also Sandra A. Cossu, B-193969, June 5, 1980, and H.M. Christopherson, B-183563, July 14, 1976, which hold that employees may not be paid for the expenses of a house-hunting trip when they subsequently decline to transfer for personal reasons within their control.

Mr. Hughes further contends that he should not be required to reimburse the agency for the travel advance for his house-hunting trip to Richmond because he was not authorized such a trip incident to his subsequent transfer to Battle Creek. However, his entitlement to a house-hunting trip to Battle Creek was not contingent upon whether or not he received expenses for such a trip to Richmond incident to the previous transfer which was ultimately cancelled. An employee has no absolute right to a house-hunting trip. The authorization of such trips is discretionary with the agency and one trip may be authorized for each change of station if in the determination of the agency it is warranted. 5 U.S.C. § 5724a(a)(2); FTR para. 2-4.1. Therefore, the fact that a trip to Battle Creek was not authorized has no bearing on his entitlement to expenses for the trip to Richmond.

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Finally, Mr. Hughes requests that, if it is held that he is not entitled to the expenses of a house-hunting trip, his indebtedness resulting from the travel advance be waived under the provisions of 5 U.S.C. § 5584. This request must be denied since this section specifically precludes waiver of erroneous payments of travel and transportation expenses and allowances and relocation expenses payable under 5 U.S.C. § 5724a.

Mr. Hughes' claim is remanded to the Defense Logistics Agency to be settled in accordance with the foregoing.


Acting Comptroller General
of the United States