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DECISION



21602
THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

FILE: B-203734

DATE: April 23, 1982

MATTER OF: Federal Bureau of Investigation - Transfer
overseas - effect of retirement on service
agreement

DIGEST:

The Federal Bureau of Investigation (FBI) may require that an employee posted overseas sign a service agreement which obligates the employee to repay the Government the cost of his transfer to the overseas post, if he elects to retire prior to the completion of the 12-month term of the service agreement. Likewise, the FBI may require that if an employee transferred overseas voluntarily retires within a period of not less than 1 nor more than 3 years, prescribed in advance by the Director of the FBI, then the employee's return expenses shall not be allowed. It is within FBI's discretion to make a determination that a voluntary retirement within the period of service agreement is not a separation beyond the employee's control.

The Honorable William H. Webster, Director, Federal Bureau of Investigation (FBI), has requested our decision as to the FBI's authority to impose certain requirements on its employees being transferred overseas. The question is whether the FBI may include a clause in the written service agreement which an employee signs upon relocation overseas, that would obligate the employee to reimburse the Government for the cost of his transfer if he elects to voluntarily retire prior to the completion of the term required by the service agreement. For the reasons set forth below, we have no objection to the proposed policy.

Mr. Webster states the reasons for the proposed policy as follows:

"The FBI maintains Legal Attaches in thirteen (13) foreign countries providing the FBI with a continuous and prompt exchange of information and assistance with foreign law enforcement agencies. The individuals assigned to these duty posts are all highly qualified agents with a broad knowledge of the FBI's responsibilities,

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as developed through years of experience. As a result of requiring that Legal Attaches have such a broad knowledge and experience, the individuals chosen are often close to retirement eligibility.

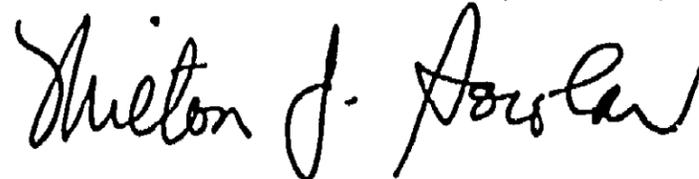
"This factor of being near or presently eligible for retirement creates a difficulty when considering employees for assignment to overseas posts. Due to budgetary limitations, it is not advantageous for the FBI, or for the Government as a whole, to transfer an individual overseas, only to have that individual opt for retirement prior to his term of service being completed. It is parenthetically noted that the problem is compounded by the fact that Special Agents of the FBI are eligible to retire at age 50, and must retire by age 55, see, Title 5, USC, Sections 8335(b) and 8336(c)."

The Director states that section 5724(d) of title 5, United States Code, allows Federal agencies to pay the travel and transportation expenses of employees transferred overseas. The Director points out, however, that 5 U.S.C. § 5722(b) provides that the expenses incurred in travel to the overseas post of duty may be paid only if the employee agrees in writing to remain in the Government service for a minimum of 12 months unless he is separated for reasons beyond his control which are acceptable to the agency. If the employee violates the agreement, the travel expenses are recoverable from the employee as a debt due the United States. Likewise, 5 U.S.C. § 5722(c) requires that the return expenses from the overseas post of duty may not be paid if the employee has not served the minimum period of not less than 1 nor more than 3 years prescribed in advance by the head of the agency. The FBI, therefore, has implemented a policy which would require employees transferred overseas to sign a service agreement containing a clause that states that voluntary retirement within the period of the service agreement will not be acceptable to the FBI as a reason for not completing the required service. The Director states that employees

who are or would be eligible to retire within or during the period of the service agreement will not be compelled to accept a transfer overseas.

In Ralph W. Jeska, B-193456, December 28, 1978, we held that an employee who retired prior to fulfilling his agreement to serve 1 year after his transfer was indebted for relocation expenses previously paid him incident to that transfer. In Jeska, the employee's agency had found that his retirement was voluntary and that there was a continuing need for his services. We stated that we had no basis to find that the agency's determination to hold the employee liable for the relocation expense payments made to him was unreasonable. Our decision in Jeska was based on our rule that the issue of whether an employee is separated for reasons beyond his control is one primarily for determination by the administrative agency concerned and we would question an agency's determination in that regard only if the agency had no reasonable basis therefor. See also B-165910, February 10, 1969. Although Jeska, supra, involved 5 U.S.C. § 5724(i) dealing with transfers within the continental United States, the pertinent language in that provision concerning service agreements is identical to the provision at issue here dealing with transfers overseas found in 5 U.S.C. § 5722(b). See 5 U.S.C. § 5724(d).

Accordingly, it is our view that the FBI may require that service agreements of employees transferred overseas state that if an employee voluntarily retires within 12 months of the date of his transfer, he will have to pay back any travel and transportation expenses already paid for the transfer to his overseas duty station. Likewise, the FBI may require that if an employee transferred overseas voluntarily retires within a period of not less than 1 nor more than 3 years, prescribed in advance by the Director of the FBI, then the employee's return expenses shall not be allowed. Of course, this policy would not be applicable to any employee the FBI transfers who must retire within the period of the service agreement because of the mandatory retirement provision in 5 U.S.C. § 8335(b).

for 
Comptroller General
of the United States