

DECISION

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

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FILE: B-213164**DATE:** February 22, 1984**MATTER OF:** Stephen J. Musser - Relocation Expenses -
Change of Residence at Permanent Duty
Station**DIGEST:**

1. Employee, who was transferred for training purposes and reimbursed for relocation expenses, subsequently claimed expenses associated with a change of residence at his permanent duty station. The claim may not be allowed since the employee's eligibility for the relocation expenses authorized by 5 U.S.C. §§ 5724 and 5724a (1982) is conditioned on such expenses being incurred pursuant to a permanent change of station. The employee was reassigned to another position at the same duty station and, therefore, did not undergo a change of duty station. Although agency officials advised the employee that he could be reimbursed for expenses incurred in a local move, the Government may not be bound by the erroneous acts or advice of its employees.
2. Employee, who was transferred in August 1981, was reimbursed for an \$850 loan origination fee he incurred in November 1982, when purchasing a home at his new duty station. Paragraph 2-6.2d of the Federal Travel Regulations, FPMR 101-7 (May 1973), in effect at the time of the employee's transfer, prohibited reimbursement for any fee constituting a finance charge under Regulation Z, 12 C.F.R. § 226.4(a). Since a loan origination fee constitutes a finance charge, the employee was not entitled to be reimbursed for any part of the fee unless he submitted a breakdown

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of items excludable from the definition of a finance charge by 12 C.F.R. § 226.4(e).

Conrad R. Hoffman, Director, Office of Budget and Finance, Veterans Administration (VA), requests our decision whether Mr. Stephen J. Musser, a VA employee, may be reimbursed for the relocation expenses he incurred when he moved between residences at his permanent duty station. We hold that the employee may not be reimbursed for moving expenses since his relocation did not involve a change of official station.

BACKGROUND

On August 23, 1981, Mr. Musser was transferred from Houston, Texas, to Dallas, Texas, in order to attend the Associate Medical Center Trainee Program at the Veterans Administration Medical Center (VAMC) in Dallas. In connection with that transfer, Mr. Musser sold his residence in Houston, traveled with his family to his new duty station, and secured a 12-month lease on a residence in Richardson, Texas. Since this was a permanent change of station, Mr. Musser claimed and was reimbursed for househunting expenses, residence sale expenses, the costs of travel between duty stations, temporary quarters subsistence expenses, and miscellaneous expenses.

In October 1982, Mr. Musser was permanently assigned to the position of Assistant Medical Center Director at the VAMC in Dallas. In connection with that assignment, personnel at the VAMC contacted the VA's Office of Budget and Finance, questioning whether Mr. Musser could be reimbursed for expenses associated with his change of residences in Richardson. Apparently, personnel in the Office of Budget and Finance replied that Mr. Musser could be reimbursed for moving expenses, even though the relocation of his residence would not involve a change of official station. Acting on that advice, the VAMC in Dallas issued travel orders authorizing Mr. Musser relocation benefits including miscellaneous expenses, temporary quarters, per diem, and real estate expenses. Additionally, the VAMC issued a Government Bill of Lading for local transportation of Mr. Musser's household goods, the costs of which amounted to \$1,120.05.

In November 1982, Mr. Musser purchased a permanent residence in Richardson. He explains that the following factors contributed to his decision to secure permanent housing in the Dallas area: (1) during the course of his training, he learned that his assignment to the VAMC in Dallas might be extended for a period of indefinite duration; (2) mortgage rates had declined substantially since his arrival in Dallas; and (3) in August 1982, his 12-month lease expired and the house he had been renting was put up for sale.

Mr. Musser filed a claim for relocation expenses including a loan origination fee (\$850), miscellaneous expenses (\$700), temporary quarters for himself and his family for 19 days (\$1,193.60), and per diem for himself and his family for 1/4 day (\$12.94). The VA allowed Mr. Musser's claim for a loan origination fee based on the change-of-station orders issued to him in August 1981. The agency denied reimbursement for the other relocation costs, and issued a bill of collection for the \$1,120.05 expended to transport Mr. Musser's household goods, determining that no authority existed for the payment of moving expenses in the absence of a permanent change of station. Further, the VA found that erroneous advice furnished by its Office of Budget and Finance provided no basis for allowance of the relocation expenses claimed by Mr. Musser.

Mr. Musser has reclaimed the relocation expenses denied by the VA, contending that he would have made different arrangements to accomplish his local move had he not been erroneously advised that moving expenses would be paid by the Government. Furthermore, he maintains that our decision in 59 Comp. Gen. 626 (1980), discussed below, provides a basis for payment of relocation expenses incurred in a local move, even though the move does not involve a change of official station.

DISCUSSION

Authority for the payment of relocation expenses is provided by 5 U.S.C. §§ 5724 and 5724a (1982), as implemented by Chapter 2 of the Federal Travel Regulations, FPMR 101-7 (September 1981) (FTR). Section 5724, which includes authorization for reimbursing expenses of an

employee's travel and the transportation of his family and household goods between duty stations, expressly applies only to those employees who are, "transferred in the interest of the Government from one official station or agency to another for permanent duty." 5 U.S.C. § 5724(a)(1). Similarly, the relocation benefits authorized by section 5724a, including miscellaneous expenses, temporary quarters, real estate expenses, and per diem for an employee's family, are limited to those employees who are transferred between duty stations or agencies in the interest of the Government. See 5 U.S.C. § 5724a(a), providing that the expenses authorized by section 5724a are payable to those employees, "for whom the Government pays expenses of travel and transportation under section 5724(a) of this title."

Applicable regulations implementing 5 U.S.C. §§ 5724 and 5724a expressly condition the payment of relocation expenses on an employee's transfer of official station. Paragraph 2-1.2a(1) of the FTR limits coverage to, among other groups, civilian employees permanently transferred from one official station to another. In addition, para. 2-1.3 of the FTR requires that the new official duty station must be at least 10 miles distant from the old official station.

There was no permanent change of duty station when Mr. Musser completed the training program; rather, he was reassigned to another position at the same duty station in Dallas. Although the VA erroneously advised Mr. Musser that he would be entitled to relocation expenses, there is no basis under the applicable statutes or regulations to permit such reimbursement. Furthermore, such erroneous advice does not provide a basis for payment of the expenses, since it is well established that the Government is not bound by the erroneous acts or advice of its employees even though committed in the course of their official duties. Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380, 384 (1947); Utah Power & Light Co. v. United States, 243 U.S. 389, 409 (1917); Steven A. Knutson, B-204372, February 8, 1982.

As indicated previously, Mr. Musser contends that our decision in 59 Comp. Gen. 626 (1980) provides a basis for payment of his claim. That decision concerned the provisions of 37 U.S.C. § 406, under which a member of the

uniformed services who is ordered to make a permanent change of station is entitled to transportation of dependents and household effects. As an exception to the orders requirement, subsection (e) of section 406 authorizes the movement of dependents and household effects without regard to the issuance of change-of-station orders if unusual or emergency circumstances exist. Interpreting section 406(e), we held in 59 Comp. Gen. 626 that the implementing Joint Travel Regulations (JTR) could be amended to allow a service member local transportation of household goods where he has been assigned to a permanent duty station for training purposes, and his assignment is involuntarily extended following the completion of training.

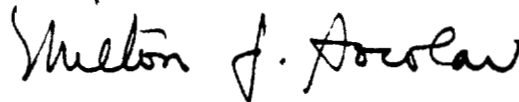
Our decision in 59 Comp. Gen. 626 does not apply in Mr. Musser's case since 37 U.S.C. § 406, as implemented by the JTR, expressly applies only to members of the uniformed services. Since Mr. Musser is an employee of the VA, described in 38 U.S.C. § 201 (1982) as an independent establishment within the executive branch of the Government, his eligibility for relocation expenses is governed by 5 U.S.C. Chapter 57, Subchapter II. See 5 U.S.C. § 5721 (1982). As discussed previously, an employee's eligibility for the relocation expenses authorized by 5 U.S.C. §§ 5724 and 5724a is conditioned upon such expenses being incurred pursuant to a permanent change of station.

Finally, we note that the VA has not questioned Mr. Musser's entitlement to be reimbursed for the \$850 loan origination fee he paid when purchasing his new residence in Richardson. In fact, the record shows that the agency reimbursed him for that fee on the basis of the orders transferring him from Houston to Dallas in August 1981. However, the authorization for reimbursement of loan origination fees, contained in FTR para. 2-6.2d, as amended (Supplement 4, October 1, 1982), applies only to those employees who reported to their new duty stations on or after October 1, 1982, subsequent to the time Mr. Musser was transferred. See Robert E. Kigerl, B-211304, July 12, 1983, 62 Comp. Gen. _____; and James C. Troese, B-211107, June 10, 1983.

The provisions of FTR para. 2-6.2d (May 1973), in effect at the time Mr. Musser reported to his new duty station, prohibited reimbursement for any item of real estate

expense which was determined to constitute a finance charge under Regulation Z, 12 C.F.R. § 226.4(a). The relevant part of Regulation Z expressly categorizes service charges and loan fees as part of the finance charge when they are imposed incident to or as a condition of the extension of credit. Since a loan origination fee generally is assessed on a percentage rate basis for the purpose of defraying a lender's administrative costs, we have stated that the fee is imposed, "incident to * * * the extension of credit," and therefore constitutes a finance charge under Regulation Z. See Stanley Keer, B-203630, March 9, 1982. Thus, Mr. Musser was not entitled to be reimbursed for a loan origination fee in connection with his transfer in August 1981, unless he provided the VA with a breakdown of specific charges which are excludable from the definition of a finance charge by 12 C.F.R. § 226.4(e). See Keer, above.

Accordingly, Mr. Musser may not be reimbursed for the relocation expenses he has reclaimed. The VA should collect from Mr. Musser the amount paid for transportation of his household goods, and the agency should redetermine his entitlement to the loan origination fee in accordance with the standards outlined above.



Acting Comptroller General
of the United States