PLM II 30881

DECISION

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

FILE: B-187650 DATE: April 4, 1985

MATTER OF: Donald A. Holmes

DIGEST:

An employee who separates from the Government within 12 months of a transfer becomes obligated to repay relocation costs where the separation is not for reasons beyond the employee's control and acceptable to the agency. Reemployment with the Government approximately 3 years later does not fulfill the statutory requirement of 12 months' service with the Government following a transfer so as to relieve the employee from debt.

A former employee, who violated his service agreement following a transfer is not relieved of his liability to repay the Government the amount paid by the Government in connection with the transfer if he accepts an appointment with another Government agency approximately 3 years later. The requirement is for 12 months of continued Government service immediately following the transfer. Reemployment after a break in service does not fulfill this requirement.

BACKGROUND

Mr. Donald A. Holmes, formerly an employee of the Department of the Army, has appealed the determination of our Claims Group, GGD, in settlement Z-2604302-069, May 21, 1984, that he is indebted to the United States in the amount of $29,799.41. Of this amount $21,674.41 represents the amounts paid by the Department of the Army in connection with his transfer from Yuma, Arizona, to Fort Belvoir, Virginia, in October 1980 which the Army seeks to recover because he did not fulfill his obligation to remain in Government service for 12 months after the transfer.[1/]

1/ Included in the $21,674.41 is a charge for $2,276.41 which represents an overpayment for the cost of shipping household goods exceeding the allowable weight limit of 11,000 pounds. Since Mr. Holmes is required to refund the cost of his transfer the full cost of transporting his household goods, $7,804.13, not just the cost of transporting the excess weight should be recovered from him.

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In addition, the Army seeks to recover $8,125 which was advanced to Mr. Holmes on December 28, 1981, for travel and relocation expenses in connection with his acceptance of an appointment to a position in Frankfurt, Germany. Mr. Holmes declined that appointment after receiving the advance. The Army Finance Center is recovering the $29,799.41 by monthly deductions from Mr. Holmes' military retired pay.

In his appeal Mr. Holmes contends that, prior to his separation on August 3, 1981, he received a release from his transportation agreement. We find no evidence that such a release was granted or properly could have been granted in the circumstances. Mr. Holmes' letter of July 20, 1981, captioned "Release of Assignment" and the undated endorsement thereto signed by Major Bruce E. Jesson, Director, Contracts and Logistics Directorate, U.S. Army Computer Command, Fort Belvoir, Virginia, pertain to his release from his position. Mr. Holmes may believe that this document was sufficient to release him from his continued service agreement. Although we do not know what was intended by this release statement or why it was considered necessary, it is clear that the officer who issued it did not intend to release Mr. Holmes from his continued service agreement since he later issued another letter which specifically deals with the transportation agreement. That letter conditions the release from the period of service requirement on his having continued Federal service in an "upward position."

Mr. Holmes states that he was appointed to a position with the General Services Administration on March 5, 1984, and he contends the agreement and release conditions are now satisfied, nullifying his obligation to repay the Army for the expenses of his transfer in 1980. He further argues that, since the Army gave him an extension of time to file a voucher for relocation expenses after his separation, the Army must have considered the agreement satisfied at that time.

With regard to the travel advance of $8,125 given Mr. Holmes in connection with the proposed employment in Germany, he contends that he is entitled to retain this money because he was not reimbursed for all allowable costs he incurred in connection with purchasing a house in Virginia incident to the transfer in 1980.

Finally he asks that the withholding from his retired pay be reduced to 15 percent in the event our ruling is not in his favor.

DISCUSSION

An agency may pay an employee's travel, transportation, and relocation expenses only after the employee has agreed in writing to remain in the Government service for 12 months after the transfer, unless separated for reasons beyond his control and acceptable to the agency concerned. 5 U.S.C. § 5724(i). Also see para. 2-1.5a(1) of the Federal Travel Regulations, incorp. by ref., 41 C.F.R. § 101-7.003 (1983). The conditions of a service agreement are both statutory and contractual. Dr. William Post, Jr., B-196795, June 5, 1980. The conditional release given Mr. Holmes requiring continued Government service essentially restated the requirement of the statute. If Mr. Holmes had remained in Government service as the release stipulates, the conditions of his service agreement would have been fulfilled.

Since the requirement of the statute is that the employee "remain in the Government service for 12 months after his transfer", Mr. Holmes' reemployment with the General Services Administration approximately 3 years later does not fulfill the statutory requirement nor the terms of the release. 5 U.S.C. § 5724(i) and Leon C. Shelley, 59 Comp. Gen. 25 (1979).

Responsibility for the determination that an employee's separation is not for reasons beyond the employee's control and acceptable to the agency rests primarily with the agency concerned. In the absence of evidence that such a determination is arbitrary or capricious, it is the policy of this Office to uphold the agency's decision. Kenneth J. Bray, B-211449, July 11, 1983, and decisions cited therein. Compare William C. Moorehead, 56 Comp. Gen. 606 (1977). No evidence has been presented in this case to show that the Army acted in other than a reasonable manner. At the time of his separation Mr. Holmes requested a release from his assignment, but did not specifically request a release from his transportation agreement. When the transportation agreement was specifically considered, apparently at a later date, his release was conditioned on continued Government service. As indicated earlier, this requirement is for 12 months of Government service immediately following a transfer with no break in service. See Finn v. United States, 192 Ct. Cl. 814 (1970).

Mr. Holmes also contends that the fact his former command allowed an extension of time in June 1982 to file travel vouchers is an indication he did not forfeit his entitlement to relocation costs. However, when Mr. Holmes wrote to his former command on May 2, 1982, requesting an extension of time to file travel vouchers, the official to whom he wrote apparently did not know that he had not complied with the conditions of his release by continuing to be employed by the Government after his separation from his position on August 4, 1981. Thus, a letter mistakenly permitting Mr. Holmes to file travel vouchers for entitlements which had been forfeited does not substantiate Mr. Holmes' contention that he was entitled to relocation expenses.

We find that the Army acted reasonably in determining that Mr. Holmes violated his service agreement since the only justification given for his action was his inability to work under the conditions at Fort Belvoir. Although he was offered assistance in resolving his problems, including a formal grievance procedure, he carried out his intent to resign. In the circumstances it would have been difficult if not impossible for the Army to have determined that his separation was for reasons beyond his control and acceptable to them. Therefore, he is indebted to the Government for funds spent on his behalf in connection with the transfer to Fort Belvoir in 1980. The determination of Claims Group is sustained.

Because we hold that Mr. Holmes is indebted to the Government for the cost of his transfer, it is unnecessary to discuss the travel advance of $8,125 which was given him to cover the cancelled appointment in Germany. This is so because the reasons he has given for retaining this money are based on claims of additional reimbursement due him for relocation expenses in connection with his transfer to Fort Belvoir. Mr. Holmes forfeited those entitlements and thus any claims for a setoff is extinguished. In that regard we point out that a travel expense advance is always considered to be in the nature of a loan which must be repaid if the travel for which it was given is not undertaken. Dr. William Post, Jr. B-196795, supra.

Finally, Mr. Holmes' request that the 25 percent withholding from his retired pay be reduced to 15 percent is a matter for consideration by the Army Accounting and Finance Center.

for Harry R. Van Cleve
Comptroller General
of the United States