

**DECISION**



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

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**FILE:** B-217489

**DATE:** August 29, 1985

**MATTER OF:** Anna and Jeffrey Pitts - Relocation Expenses -  
Transfer for Employees' Convenience

**DIGEST:**

Two Internal Revenue Service employees accepted lateral transfers from Los Angeles District to San Francisco District pursuant to a Merit Promotion Vacancy Announcement geographically restricted to "District Wide." The employees were furnished the Vacancy Announcement subsequent to requesting consideration for openings in the San Francisco District. Generally, entitlement to relocation expenses is contingent upon a determination that transfer is not primarily for the convenience or benefit of employee or at his request. Primary responsibility for determination rests with agency. GAO will not disturb agency's determination unless clearly erroneous, arbitrary or capricious. Since these transfers were to positions at the same grade level without known promotion potential, and the employees were not otherwise recruited for the positions, we will not disturb agency determination that transfers were primarily for employees' own convenience or benefit.

The issue in this decision is whether the transfers of two employees were in the interest of the Government so that they may be reimbursed for relocation expenses in connection with the change of their permanent duty station. For the reasons stated below, we believe that the employees' transfers must be characterized as being primarily for their own convenience or benefit. Therefore, the employees are not entitled to reimbursement for their relocation expenses.

This decision is in response to a letter from the National Treasury Employees Union on behalf of Anna R. and Jeffrey D. Pitts, Revenue Officers, San Francisco District, Western Region, Internal Revenue Service, requesting a decision as to whether the employees' claims for relocation expenses may be paid.

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Mr. and Mrs. Pitts were both employed as GS-11 Revenue Officers, in Van Nuys, California, while assigned to the Los Angeles District. In September 1981, Anna Pitts submitted a request for consideration for promotional or lateral reassignment to the San Francisco District, Sacramento post of duty. On October 16, 1981, Jeffrey Pitts submitted a request for lateral reassignment for himself and his wife to Sacramento after learning of a need for GS-11 Revenue Officers at the Sacramento station. He stated that he and his wife wanted to transfer because of family and personal reasons. He added that the request was conditional on reimbursement of relocation expenses since the costs would otherwise be prohibitive.

On November 25, 1981, a Merit Promotion Vacancy Announcement was issued for one or more GS-11 Revenue Officer positions at the Sacramento, California, duty station. The area of consideration was limited to "District Wide." Selection for the openings was to be done on a competitive basis. Mrs. Pitts was informed in December 1981 of the vacancy announcement by the Personnel Branch. She asked that she and her husband be considered. In February 1982, Mr. and Mrs. Pitts were informed by the Personnel Branch that they had been selected. At that time they were told that no funds were available for moving expenses, but they say the statement only applied "at present," and they understood this to mean that they would not be reimbursed until the next fiscal year beginning October 1, 1982, when new travel money would become available. They accepted the transfers and reported to work at the Sacramento post of duty in July 1982. The Notification of Personnel Action for the reassignments state that "Moving Expenses under PL 89-516 are not authorized." On August 24, 1982, Mr. and Mrs. Pitts submitted travel vouchers for their relocation expenses.

Mr. and Mrs. Pitts believe that they are entitled to payment primarily on the basis of the decisions of our Office in Eugene R. Platt, 59 Comp. Gen. 699 (1980); Reconsideration of Platt, 61 Comp. Gen. 156 (1981), and Bernard J. Philipps, B-206624, August 16, 1982. They contend that they should be reimbursed for moving expenses because they were competitively selected for the positions to which they were transferred. They maintain that their transfer was in the interest of the Government since they were found to be the best candidates and it is in the Government's interest to fill positions with the best available personnel.

The Acting Regional Fiscal Management Officer, Western Region, IRS, determined that Mr. and Mrs. Pitts were not entitled to moving expenses because (a) they were forewarned that expenses would not be reimbursed; (b) the transfer was a lateral transfer and not a promotion; and (c) the Standard Form 50 issued to them clearly stated that moving expenses were not authorized. Prior to making a final determination, an opinion was requested from the Assistant Regional Counsel as to the propriety of the claim. The Assistant Regional Counsel advised that a denial could be supported on the basis of Julie-Anna T. Tom, B-206011, May 3, 1982, and other Comptroller General decisions involving lateral transfers. Based on Counsel's opinion, the claim was denied.

An employee is entitled to relocation expenses only if the agency determines that the transfer is in the interest of the Government and not primarily for the convenience or benefit of the employee. 5 U.S.C. §§ 5724(a) and (h), and Federal Travel Regulations, para. 2-1.3 (Supp. I, September 28, 1981), incorp. by ref., 41 C.F.R. § 101-7.003 (1984). Unless agency regulations otherwise limit relocation expenses, an employee who transfers upon a selection for promotion under a merit promotion plan is considered to have been recruited for the position so that his transfer is in the interest of the Government. Eugene R. Platt, 59 Comp. Gen. 699 (1980), reconsidered 61 Comp. Gen. 156 (1981). On the other hand, employees often transfer to a position at the same grade as their previous position without greater promotion potential (lateral transfer). In such cases the agency must determine, based on the facts involved, whether the transfer is primarily in the interest of the Government or is primarily for the employee's benefit or convenience.

In recognition of the authority of the employing agency to determine whether a transfer is primarily in the interest of the Government or primarily for the convenience or benefit of the employee, we will not overturn the agency's determination unless it is arbitrary, capricious, or clearly erroneous under the facts of the case. Julie-Anna T. Tom, supra. An employee's transfer may be determined to be primarily in the interest of the Government even though the transfer also serves personal needs. Nevertheless, the fact that the employee was transferred to fill a vacant position and been competitively selected does not require a determination that the transfer was primarily

in the Government's interest. Carol B. McKenna, B-214881, May 15, 1984.

In this case, we concur in the determination of the Acting Regional Fiscal Management Officer that Mr. and Mrs. Pitts are not entitled to relocation expenses under the facts as presented. Although they responded to a Merit Promotion Vacancy Announcement and were competitively selected for their positions as in Platt, supra, and Philipps, supra, those cases involved promotions, whereas in this case the reassignments did not represent a promotion, but a lateral transfer to positions having no greater promotion potential than their former positions.

In cases such as this where an employee's transfer did not represent a promotion but was a lateral transfer to a position having no greater promotion potential, we have sustained the agency's determination that the transfer was for the employee's convenience and not in the interest of the Government. See Eugene R. Platt, supra, at 701, and cases cited therein; Norman C. Girard, B-199943, August 4, 1981; and Samuel Evans, B-216652, May 6, 1985.

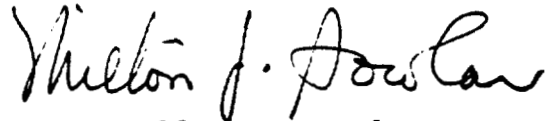
Mr. and Mrs. Pitts also contend that the IRS has improperly relied upon section 0335.222(1)(b) of the Internal Revenue Manual. It is reported that this section provides for a discretionary exception to competitive procedures if the position change was one from a position having known promotion potential to one of the same grade having no more promotion potential. By relying on this section, the Pitts contend, the IRS attempts to classify their transfer as non-competitive, and thereby remove it from the holding of our Platt decision. The IRS has not put forth this contention in its reply to our Office, and, in any event, we have recognized above that the transfers were competitive, but that this is not determinative of the agency's obligation to pay moving expenses.

Mr. and Mrs. Pitts additionally point out that section 0335.2662 of the Internal Revenue Manual, in referring to lateral reassignments, provides that an action involving an employee selected for a lateral reassignment should be effected only if the person is considered to be the "best person" for the position and after the impact on the losing office has been determined. The regulation goes on to state that "[w]hen the 'best person' test has been met, and the decision has been made to release the employee

involved, moving expenses should normally be paid." Mr. and Mrs. Pitts contend that, if the IRS followed its own regulations, they were considered to have been the best persons for the vacant positions, and, therefore, moving expenses should be paid according to the quoted regulation.

However, we note that the regulation further states that the final decision to pay or not should be based on the sound judgment of appropriate management officials. The Assistant Regional Counsel, IRS, after referring to the above quoted regulation, has concluded that "from the totality of circumstances the transfer was . . . effected primarily for the benefit of the claimants rather than the interest of the Government." As indicated above, we concur in this determination.

Thus, under the circumstances of this case, the holdings in Platt, Platt Reconsideration, and Philipps do not apply. Accordingly, payment to Mr. and Mrs. Pitts of travel and relocation expenses in connection with the subject transfer must be denied.

A handwritten signature in cursive script, reading "Milton J. Fowler".

Acting Comptroller General  
of the United States