

DECISION



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

FILE: B-218966

DATE: October 3, 1985

MATTER OF: Stephen M. Weaver

DIGEST:

An employee of the Forest Service stationed in Alaska requested a voluntary transfer with a demotion to Idaho. Two years later, when the position to which he had transferred was abolished and he was placed into another position at the same grade, the employee claimed relocation expenses and backpay. There is no basis to pay either backpay or relocation expenses since the transfer was for the benefit of the employee and occurred before he fulfilled the service agreement incident to his transfer to Alaska. The employee has not been affected by an unwarranted or unjustified personnel action.

The issue in this decision is whether an employee who initiates a voluntary transfer with a demotion is entitled to relocation expenses and backpay when, two years later, the position to which he transferred is abolished and the employee is placed in a new position at the same grade.^{1/} We find there is no basis to pay backpay or relocation expenses since the employee has not been affected by an unwarranted or unjustified personnel action and the transfer was for his benefit and took place before he fulfilled his service agreement.

BACKGROUND

Mr. Stephen M. Weaver, an employee of the Forest Service, was promoted to a GS-11 position and transferred from McCall, Idaho, to Ketchikan, Alaska, on July 12, 1981,

^{1/} Mr. Clarence E. Tipton, an authorized certifying officer with the Forest Service, has requested an advance decision.

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after signing a 2-year service agreement. Due to financial hardships incurred because of the inability to sell his residence in Idaho and other reasons, Mr. Weaver initiated a request to return to Idaho. In March 1982 he was transferred on a voluntary basis with a demotion to the Nezperce National Forest with an official duty station in Kooskia, Idaho. No transfer of station expenses were authorized since he had not completed the 2-year service agreement required upon transfer to Alaska and the transfer back to Idaho was at the employee's request.

The position to which Mr. Weaver transferred in Idaho was that of a zone wildlife biologist, GS-9, responsible for the Selway and Clearwater Ranger Districts of the Nezperce National Forest. In 1984, a little over 2 years after Mr. Weaver's transfer, the Forest Supervisor decided to place a wildlife biologist in each district. At no change in grade Mr. Weaver remained at Kooskia, Idaho, as the wildlife biologist for the Selway Ranger Station only.

As a result of the Forest Supervisor's decision Mr. Weaver submitted a claim for relocation expenses and backpay. It is his contention that the transfer was in the interest of the Government. He notes that the Forest Service reimbursed the relocation expenses of the employee with whom he "traded" jobs. He contends also that he was informed by Forest Service personnel that when he accepted the downgrade upon transfer back from Alaska he would retain his status as a GS-11 lateral candidate without having to compete for repromotion. Regarding the 1984 change in position Mr. Weaver contends that the change was an adverse action because he accepted a voluntary transfer to a zone position and the change of that position to that of wildlife biologist for a single district abrogated his agreement to transfer voluntarily.

The Forest Service administratively denied his claim for relocation expenses stating that he did not fulfill his service agreement to stay in Alaska for 2 years and that the transfer back to Idaho was primarily for his own benefit. The claim for backpay was also denied on the basis that he accepted a demotion in return for his transfer back to Idaho and that the decision to restructure the organization 2 years later did not make the demotion an adverse action. However, the Forest Service has requested our decision on whether Mr. Weaver is entitled to relocation costs or backpay.

RELOCATION EXPENSES

The payment of travel, transportation, and relocation expenses of a Government employee transferred outside the continental United States is authorized by 5 U.S.C. §§ 5724(d) and 5722 (1982) as implemented by the Federal Travel Regulations, incorp. by ref., 41 C.F.R. 101-7.003 (1983) (FTR). Implementing 5 U.S.C. § 5722(c), FTR para. 2-1.5a(1)(b) provides that an employee must remain at his post of duty outside the conterminous United States for at least 1 year and no more than 3 years to be eligible for return travel expenses, unless the employee is released from the agreement for reasons which are beyond the employee's control and acceptable to the agency. Furthermore, implementing 5 U.S.C. § 5724(h), FTR para. 2-1.3 states that the Government may not pay travel and relocation expenses when a transfer is primarily for the convenience or benefit of the employee or at his request.

Mr. Weaver signed an agreement to remain in Alaska for 2 years in order to qualify for return travel. He was reassigned at his own request before he completed 1 year. The responsibility for the determination of whether an employee should be released from an overseas service agreement because his reasons for noncompliance are beyond his control and acceptable to the agency rests primarily with the agency concerned. In the absence of evidence that it was arbitrary or capricious, we will not overrule such a determination. William C. Moorehead, 56 Comp. Gen. 606 (1977); Arnold M. Biddix, B-198938, March 4, 1981; Richard E. Pozek, B-191081, July 26, 1978. The agency concerned is also responsible for determining whether a change of official station is for the convenience or benefit of the employee or at his request, and we will not substitute our judgment for that of the agency except if the action was arbitrary or capricious.

Mr. Weaver argues that the Forest Service sanctioned his move by promoting and paying relocation expenses for the employee with whom he "traded" jobs. The Forest Service acknowledges that it obtained a benefit from Mr. Weaver's transfer including the early promotion and transfer of his replacement. However, the Forest Service points out that, but for Mr. Weaver's initiation of the transfer before the end of his 2-year service agreement, the transfer would not have occurred. Thus, it maintains that the transfer was for the employee's benefit and any benefit to the Government was incidental. On the basis of the record before us, we cannot say that the determination by the Forest Service was

arbitrary or capricious. Accordingly, we find no basis to overturn the agency's determination to deny relocation expenses.

Mr. Weaver also argues that by changing his duties 2 years after the voluntary transfer back to Idaho the Forest Service has in some way broken its agreement and thus becomes obligated to pay for his travel. As indicated below, we do not find that the Forest Service acted beyond the scope of its authority in changing the duties Mr. Weaver performed without changing his grade. Thus, we do not find that this action altered the situation with respect to the employee's violation of his 2-year travel and transportation agreement.

BACKPAY

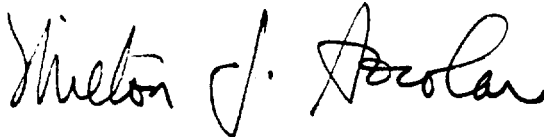
Under the provisions of the Back Pay Act, 5 U.S.C. § 5596 (1982), an employee, who has been affected by an unjustified or unwarranted personnel action which has resulted in the reduction of his pay, is entitled to receive, upon correction of the personnel action, an amount equal to the pay he would have received but for the unwarranted or unjustified personnel action. An employee becomes entitled to such backpay if, on the basis of a timely appeal or an administrative determination, an appropriate authority determines that under applicable law, rule, or regulation, such an unwarranted personnel action has been taken. However, Mr. Weaver initially agreed to the downgrading from GS-11 to GS-9 in order to permit his transfer back to Idaho. He now indicates that he was given erroneous information at that time in that he was advised that he would be eligible for repromotion to grade GS-11 on a non-competitive basis. An employee's voluntary acceptance of a downgrading for personal reasons is not affected by the fact that he may have been given some erroneous information regarding his status after such downgrading. Arthur A. Axelson, B-200746, October 8, 1981. See also R. Dewayne Noell, B-204729, October 28, 1981. Thus, Mr. Weaver is not entitled to backpay because of any error in implementing his downgrading.

Regarding the change in the duties performed by Mr. Weaver as a GS-9 wildlife biologist, he asserts that the agency in effect reduced him in rank in that they reduced his area of responsibility from two districts to one. Prior to enactment of the Civil Service Reform Act of 1978, October 13, 1978, Pub. L. 95-454, 92 Stat. 1136,

reduction in rank was defined as an adverse action which was subject to prescribed procedures and rights of appeal. 5 U.S.C. § 7511 (1976 ed.). Under the 1978 act a reduction in rank is no longer defined as an adverse action. Therefore, no procedural or appeal rights are granted an employee whose job is changed in a manner which might be considered to reduce the individual's rank. Further, the backpay provisions are effective only when a reduction in pay has resulted from an agency's action. Samuel Freiberg, 59 Comp. Gen. 185 (1979).

CONCLUSION

For the reasons stated we do not find that the actions taken by the Forest Service denying Mr. Weaver the cost of his return travel from Alaska or accepting his voluntary downgrading were improper. Further, the action taken 2 years later to change his duties without a change in his grade was not an adverse action at that time nor did it have any effect on the actions previously taken in connection with his return from Alaska. Accordingly, we find no basis upon which his claims for travel and transportation costs or backpay may be allowed.

for 
Comptroller General
of the United States