The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: David B. Pidduck - Relocation Service Contract - Liability Upon Cancellation - Duplicate Costs - Taxability

File: B-231992

Date: December 15, 1989

DIGEST

1. Employee accepted use of relocation services contractor, but rejected contractor's offer to purchase his former home. Employee does not have to reimburse the agency for direct costs agency paid to contractor when the employee rejects the contractor's purchase offer. Gerald F. Stangel, Larry D. King, B-231911, Mar. 10, 1989, 68 Comp. Gen. ___.

2. Agency paid relocation services contractor its direct costs for appraisals and title work. After employee rejected contractor's purchase offer, he also incurred expense for appraisal and title services. He may not be reimbursed for those expenses since they duplicate expenses agency paid to relocation services contractor. The Federal Travel Regulations in para. 2-12.5 (Supp. 11, Aug. 27, 1984) prohibit a dual benefit once an election is made to use a contractor.

3. In the absence of any statutory or regulatory restriction, the amounts paid by an agency to a relocation services contractor on behalf of an employee under the provisions of 5 U.S.C. § 5724c are not considered in determining the maximum allowable reimbursement to the employee for his own expenses in selling his residence on the open market under § 5724a(a)(4).

4. The FTR provides that the expenses paid by a relocation company providing relocation services on behalf of a transferred employee may be subject to a relocation income tax allowance to the extent such payments constitute income to the employee. Specific questions pertaining to the income tax consequences of such payments or to the applicability of the allowance should be addressed to the Internal Revenue Service.

5. Agency is correct in its contention that employee was erroneously reimbursed for mileage for weekend return

travel to any place other than his new headquarters. Such overpayments may be considered for waiver if they occurred after December 28, 1985, the effective date of the amendment to 5 U.S.C. § 5584 allowing waiver of travel expense overpayments.

DECISION

This decision is in response to a request from an authorized certifying officer, Department of Energy, Bonneville Power Administration (BPA), Portland, Oregon,1/ concerning various issues pertaining to payments made to a relocation services contractor and to a transferred employee in connection with the sale of the employee's residence. In addition, we are asked to consider the legality of reimbursement to the employee for voluntary weekend travel to his former residence from temporary duty (TDY) locations after his transfer was effected. Finally, we are asked whether collection of any overpayments to the employee may be waived.

BACKGROUND

The Department of Energy has entered into a relocation services contract under the provisions of 5 U.S.C. § 5724c (Supp. IV 1986) with the Howard Relocation Group in order to assist employees in selling their residences at their old duty stations when they receive permanent changes of station. Certain direct costs are incurred by the contractor such as appraisals, title work, and inspections, and they are billed to and reimbursed by BPA.

Mr. David B. Pidduck was authorized a permanent change of station from Pasco, Washington, to Snohomish, Washington, in July 1985. Mr. Pidduck initially chose to utilize the services offered by the Howard Relocation Group in order to sell his residence in Pasco. Mr. Pidduck later declined Howard's offer to purchase his former residence and instead sold it himself on the open market. Prior thereto, BPA paid the contractor for costs incurred of $700 for appraisals and $118.65 for title work. Later, BPA paid Mr. Pidduck $300 for an appraisal and $415.25 for title work.

The agency also made payments to Mr. Pidduck for weekend travel mileage from various TDY locations to his former residence in Pasco after he had already reported to his new duty station in Snohomish.

1/ Joanne Henry, Reference DSDT.

OPINION

Payments to Howard Relocation Group

The certifying officer says that prior decisions of the Comptroller General have disallowed reimbursement for costs incurred for unsuccessful attempts to sell residences. In this case Mr. Pidduck initially accepted the services of Howard Relocation Group, but later declined Howard's offer to purchase his residence. Thus, a question arises as to whether the unconsummated transaction is analogous to an unsuccessful attempt to sell a residence which would require Mr. Pidduck to reimburse BPA for the amounts paid to Howard.

In our decision Gerald F. Stangel, Larry D. King, B-231911, Mar. 10, 1989, 68 Comp. Gen. ___, we held that BPA is obligated to pay all of the direct costs to the Howard Relocation Group under the terms of the contract without seeking reimbursement from the employee, so long as the transfer is in the interest of the government and is not primarily for the benefit of the employee. This decision applies to Mr. Pidduck and he does not have to reimburse BPA for any of the expenses paid to the Howard Relocation Group by BPA.

Duplicate Payments

The regulations implementing the statutory authority to enter into relocation service contracts in 5 U.S.C. § 5724c (Supp. IV 1986) are contained in Part 12 of Chapter 2, Federal Travel Regulations (FTR), FPMR 101-7, incorp. by ref., 41 C.F.R. § 101-7.003 (1986). Paragraph 2-12.5 (Supp. II, Aug. 27, 1984) provides:

> "2-12.5 Procedural requirements and controls.
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> . . . . .
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> "b. Dual benefit prohibited. Once an employee is offered, and decides to use, the services of a relocation company, reimbursement to the employee shall not be allowed for expenses authorized under Chapter 2, Parts 1 through 10, that are analogous or similar to expenses or the cost for services that the agency will pay for under the relocation service contract."

These governing regulations make clear that expenses similar or analogous to those paid to the relocation service company by an agency may not be reimbursed to the employee.

James T. Faith, B-229452, June 10, 1988, 67 Comp. Gen. 453 (1988); Louis H. Schwartz, B-231485, Jan. 19, 1989. Accordingly, Mr. Pidduck is not entitled to be reimbursed for the appraisal and title service costs that he incurred after rejecting the contractor's offer.

The certifying officer also asks whether the amounts paid to the Howard Relocation Group and the employee can be compared and reimbursement to the employee made on the basis of the higher amount. We find no basis in the regulation for such a cost comparison. Rather, under the clear terms of the regulation, the employee is not liable for the payments to the relocation services contractor but is liable for the subsequent duplicate payments irrespective of the amounts involved. Therefore, the payments to Mr. Pidduck for appraisal and title services must be collected back in full.

Maximum Reimbursement

The certifying officer questions whether the maximum reimbursement allowed for the sale of a residence2/ as provided for by 5 U.S.C. § 5724a(a)(4)(B)(i) (Supp. IV 1986), should be computed on the basis of the combined total payments made to the Howard Relocation Group and to the employee. In this case the agency has paid the contractor directly for certain expenses under 5 U.S.C. § 5724c, and has also reimbursed Mr. Pidduck his sales expenses under 5 U.S.C. § 5724a(a)(4)(A). The combined total amount exceeds the 10 percent limitation.

The maximum reimbursement provision cited above expressly applies only to "reimbursement under this paragraph . . . ," referring to reimbursement for expenses required to be paid by the employee. Likewise, section 5724c does not refer to the maximum reimbursement allowed under section 5724a(a)(4)(B)(i), nor does it refer to any other ceilings on payments under the contracts authorized by that section. Moreover, the General Services Administration has not provided for any ceiling on reimbursement when a relocation services contractor is used. See FTR Chapter 2, Part 12, cited above. Therefore, in the absence of any statutory or regulatory limitation, we conclude that the amounts paid to the Howard Relocation Group on behalf of the employee under the provisions of 5 U.S.C. § 5724c are not to be considered in determining the employee's maximum allowable

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2/ Ten percent of the sale price or $15,000, adjusted yearly, whichever is less.

reimbursement for the sale of his residence under 5 U.S.C. § 5724a(a)(4).

Relocation Income Tax Allowance

The certifying officer questions whether the allowable amounts paid to the Howard Relocation Group should be included in the computation of Mr. Pidduck's relocation income tax allowance.

The FTR, in para. 2-11.3i (Supp. 27, Jan. 1, 1988), states that the expenses paid by a relocation company providing relocation services to a transferred employee may be subject to a relocation income tax allowance to the extent such payments constitute income to the employee. However, we cannot answer the certifying officer's specific question because FTR, para. 2-12.7 (Supp. 11, Aug. 27, 1984), provides that questions as to the income tax consequences of payments to relocation companies should be addressed to the Internal Revenue Service.

Weekend Return Travel

The agency is correct in its determination that Mr. Pidduck was erroneously reimbursed following his transfer for mileage for weekend return travel to any place other than his new headquarters, but that he would be entitled to continuation of per diem during those weekends. Michael K. Vessey, B-214886, July 3, 1984. The net overpayment should be recovered from Mr. Pidduck. We understand that he has requested waiver of such amount. Waiver of erroneous travel payments is available under 5 U.S.C. § 5584, as amended by Public Law 99-224, 99 Stat. 1741-1742, December 28, 1985. However, waiver is only available with respect to erroneous travel payments made to an employee on or after December 28, 1985. Accordingly, if there were erroneous payments made to Mr. Pidduck on or after that date, they may be considered for waiver of repayment under the procedures outlined in 4 C.F.R. part 92 (1988).

Milton J. Socolar

Acting Comptroller General
of the United States