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**Matter of:** John C. Eastman - Reconsideration

**File:** B-246538.4

**Date:** March 18, 1994

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**DIGEST**

Two years after transferring from an intermittent schedule C position in California to a schedule C position in Washington, D.C., an employee filed a claim for relocation benefits. His agency denied the claim because there had been no authorization of such benefits and no record of a determination at the time he received the Washington appointment that it was a transfer in the interest of the government for which relocation benefits would be paid. The denial is sustained. The schedule C position to which the employee transferred was neither part of a merit promotion plan nor competitively selected, and, thus, the transfer was not one which may be categorically considered to carry with it relocation benefits. Therefore, without clear evidence of such a specific determination in that regard by the agency, the claim is too doubtful to allow. John C. Eastman, B-246538.2, Jan. 27, 1993, affirmed.

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**DECISION**

Mr. John C. Eastman, a former employee of the United States Commission on Civil Rights, requests reconsideration of our decision, John Eastman, B-246538.2, Jan. 27, 1993, denying his claim for relocation benefits incident to his 1987 move from intermittent employment in Claremont, California, as an Assistant to a Commissioner, to a full-time position in Washington, D.C., as the Commission's Public Affairs Officer.[1] We affirm our earlier decision.

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[1]Upon receipt of Mr. Eastman's request for reconsideration, we requested and were furnished the Commission's views on the request. Subsequently, Mr. Eastman filed suit on this claim in the U.S. Court of Federal Claims, No. 93-562C, filed Sept. 9, 1993. The court granted the plaintiff's motion for a stay of proceedings in the suit on Feb. 1, 1994, pending completion of our action on Mr. Eastman's request for reconsideration of our Jan. 27, 1993 decision.

BACKGROUND[2]

The record shows that Mr. Eastman was appointed to an intermittent, schedule C, GS-11 position in California on June 23, 1987, which he held for about 2 1/2 months until, on September 9, 1987, he was appointed to the full-time, GM-14, schedule C position of Public Affairs Officer in Washington. When Mr. Eastman received his appointment to the Public Affairs Officer position in Washington, the agency did not issue written travel orders to him providing for a transfer from California to Washington and authorizing relocation benefits, nor did it require that he sign a written 12-month service agreement. About 2 years after Mr. Eastman moved to Washington, he states, he learned he may have been eligible for such benefits and submitted a claim to the Commission amounting to in excess of $18,000. The Commission denied the claim.

Mr. Eastman appealed to our Claims Group, which determined that Mr. Eastman was an employee for purposes of the statute that authorizes relocation benefits for civilian employees, 5 U.S.C. § 5724 (1988), and authorized payment on his claim. The Commission requested further consideration of that settlement and, in John Eastman, B-246538.2, Jan. 27, 1993, we reversed on the grounds that the agency had issued no travel orders or other authorization for reimbursement of relocation expenses nor had it made a determination at the time of Mr. Eastman's appointment that his transfer was in the interest of the government and not primarily for his own benefit or convenience, as required by law.

In his request for reconsideration, Mr. Eastman asserts that his transfer was in the interest of the government, and that relocation benefits may be paid to an employee even when there are no written travel orders and a signed service agreement if the employee otherwise meets all the requirements to receive those benefits.[3]

OPINION

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[2]The background of this case is more fully stated in our prior decision. Only matters directly relevant to the present request for reconsideration are being stated here.

[3]He also asserts that his status in California as an intermittent employee would not preclude him from receiving relocation benefits. In our prior decision, we found it unnecessary to decide this issue, and because of the similar grounds on which we affirm that decision, we also find it unnecessary to decide that issue here.

The statutory authority for payment of travel, transportation and relocation expenses of an employee transferred in the interests of the government from one official station to another for permanent duty is found in 5 U.S.C. §§ 5724 and 5724a. Such allowances are payable under regulations prescribed in the Federal Travel Regulation (FTR), 41 C.F.R. Chapter 302[4] "when the head of the agency concerned or his designee authorizes or approves" them. 5 U.S.C. § 5724(a). Payment is authorized only after the employee agrees in writing to remain in the government for 12 months after the transfer, and the allowances are not payable if the transfer is made primarily for the convenience or benefit of the employee, or at his request. 5 U.S.C. §§ 5724(h) and (i).

The implementing FTR provisions provide that when it is determined that a relocation will be authorized at government expense, a written travel authorization shall be issued to the employee before he or she reports to the new official station, and such travel authorization shall indicate the specific allowances which are authorized as provided under the regulation. FTR § 302-1.3(c). The regulations also provide that the travel authorization is to specify clearly the purpose of the travel and it is to include cost estimates which the agency shall use to obligate the necessary funds. FTR § 301-1.102(c) and (d).

Thus, travel orders are not a mere formality, but are generally considered the authorizing document indicating that the appropriate determinations have been made by the agency, as required by the statutes and regulations, and stating the allowances provided.

Mr. Eastman points out that we have held that in certain situations an employee may be paid relocation benefits although he was not issued a formally approved travel order or a signed service agreement if the employee continued in the federal service for at least 12 months following the transfer, as he did. However, in these cases, as explained below, other facts or documents were present to establish that a transfer was authorized or intended by the agency which was of a type considered to be in the interest of the government.

The general rule we apply in this type of case is that the determination of whether an employee's transfer is in the interest of the government and not primarily for the convenience of the employee is a matter of discretion with the agency, and we will not overturn such a determination

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[4]As they apply to this case, these regulations are substantially the same as the provisions they superseded in 1989 previously published as FPMR 101-7, GSA Bulletin FPMR A-40.

unless it is arbitrary, capricious or clearly erroneous under the facts of the case. Julia R. Lovorn, 67 Comp. Gen. 392 (1988).

Our cases discuss a number of factors relevant to this determination. For example, generally, in the absence of agency regulations to the contrary, when an employee is actively recruited to a position with promotion potential as part of a merit selection plan, the transfer will be considered in the interest of the government. Bernard J. Phillips, B-206624, Aug. 16, 1982. See also Eugene R. Platt, 59 Comp. Gen. 699 (1980). Compare, John J. Hertzke, B-205958, July 13, 1982; and Julie-Anna T. Tom, B-206011, May 3, 1982. We also recognize, however, that an agency has discretion to determine and make known in offering a position, that it will not pay relocation allowances incident to filling the position. See Paul J. Walski, B-190487, Feb. 23, 1979. See also, Eugene R. Platt - Reconsideration, 61 Comp. Gen. 156, 162 (1981).

Mr. Eastman argues that his move to Washington involved a promotion in grade, and that he was recruited for the position by the agency's Acting Staff Director, and thus he is covered by the rule set out in the 1980 Platt decision, supra. We note, however, that Mr. Eastman was not appointed under a merit selection plan; he moved between two schedule C positions, which are positions excepted from the merit selection requirements of the competitive service. See 5 C.F.R. Part 6. Therefore, we do not believe that his appointment can be considered as categorically meeting the statutory and regulatory requirements to authorize relocation allowances without clear evidence that the agency made the required determinations and intended that such allowances be paid. As noted previously, in the absence of any limiting regulations, agencies have wide discretion to determine whether a transfer is in the interest of the government, and an agency is not required to pay relocation benefits incident to all transfers. Jean Jacobson, B-236651, Sept. 21, 1990; Paul J. Walski, supra; and Platt - Reconsideration, supra. As the cases described above show, each determination necessarily must be made on a case-by-case basis; the presence of one or more factors cited in our decisions does not entitle an employee to relocation benefits as a matter of law.

Mr. Eastman also argues that the Acting Staff Director at the time of his appointment had determined that his transfer was in the interest of the government, but that she did not authorize relocation benefits because the Commission's Deputy Staff Director advised her that it was not permissible. Mr. Eastman argues that such advice was erroneous. At Mr. Eastman's request, the former Acting Staff Director, who had since left the Commission, sent the then current

Acting Staff Director a letter dated December 22, 1989, confirming this. Her letter did not state what the Deputy Staff Director's objections were, and in response to our inquiry, the Commission's Solicitor has advised us that there is no written record of the former Acting Staff Director's request to the Deputy Staff Director or of his reply. Further, the Solicitor noted that, because the position was established under schedule C, there was no formal job announcement, which would have stated whether relocation benefits were being offered with the job. Also, neither the Standard Form (SF 50) reflecting Mr. Eastman's appointment nor any other document we have been furnished authorizes relocation benefits for him, and the Commission subsequently has refused to approve such benefits.

As noted previously, the schedule C position to which Mr. Eastman was appointed was not competitively selected under a merit promotion program, and there are no contemporaneous memoranda, travel orders or other documents establishing a clear intent to authorize relocation benefits. While it is unfortunate that a written record was not made at the time of Mr. Eastman's move to Washington documenting the reason relocation benefits were not authorized at that time, and although the Acting Staff Director may have told him she would authorize such benefits if agency regulations permitted, the fact remains that she did not do so, apparently based on advice she received that the agency would not permit it. While the basis for the advice is not stated by the agency, we note that Mr. Eastman served only 2 1/2 months in the GS-11 intermittent position in California before his appointment as the Commission's GM-14 Public Affairs Officer in Washington. It may be that, in this situation, responsible agency personnel considered the California position as only temporary pending arrangements for the Washington position. In that case, payment of relocation expenses may be barred by the longstanding rule that an employee may not be assigned to a duty station at which he is not expected to remain for an extended period of time for the purpose of providing entitlement to travel and relocation benefits.[5] 60 Comp. Gen. 569 at 572 (1981), and cases cited therein.

Further, the agency also may have considered the likely availability of other qualified candidates in the Washington

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[5]At the time of Mr. Eastman's appointment, there was no authority to reimburse a new employee (with exceptions not applicable in Mr. Eastman's case) for the costs of travel and transportation incurred in reporting to his initial permanent duty station. FTR, para. 2-1.5e(b), FPMR 101-7, Bulletin A-40, eff. Nov. 1, 1981. See also 53 Comp. Gen. 313 (1973).

area and made a determination that offering reimbursement for relocation benefits at a substantial cost to the agency, would be unnecessary to fill the position eventually filled by Mr. Eastman. We note that relocation benefits apparently were not a determinative factor in Mr. Eastman's acceptance of the position since he moved to Washington without any written authorization or firm promise of such benefits, and he did not file a claim with the agency for such benefits until 2 years later.

In circumstances such as this where a claim admits of substantial doubt, we follow the longstanding rule that the accounting officers of the government should reject or disallow claims as to which they believe there may be a substantial defense in law or as to the validity of which they are in doubt, leaving the claimant to pursue his claims in a court of competent jurisdiction, which is better equipped to resolve such claims. See 49 Comp. Gen. 656, 662 (1970); 50 Comp. Gen. 434, 441 (1970); and decisions cited therein. Accordingly, the denial of Mr. Eastman's claim is affirmed.

Robert P. Murphy
Acting General Counsel