



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Darrell M. Thrasher

File: B-259960

Date: September 21, 1995

DIGEST

Department of the Army employee responded to a job opportunity announcement which specified that permanent change-of-station benefits would not be paid. He thereafter sought reimbursement for his relocation expenses based on his Mobility Agreement which stated in part that benefits will be provided under controlling regulations. Under Reconsideration of Platt, 61 Comp. Gen. 156 (1981), agencies may issue a regulation which sets forth conditions under which relocation expenses will or will not be paid, provided that the information is clearly communicated in advance and in writing. Paragraph C4100-2(c) of Volume 2, Joint Travel Regulations, is controlling and specifically provides for such discretionary determination. Since the job opportunity announcement stated that the benefits would not be paid, the claim is denied.

DECISION

This decision responds to correspondence from Mr. Darrell M. Thrasher, who is appealing our Claims Group's Settlement Z-2869317, Dec. 9, 1994, which disallowed his claim for relocation expenses incident to his transfer in March 1993. We sustain our Claims Group's action for the following reasons.

Mr. Thrasher was employed as a Grade GS-9, step 5, Telecommunications Specialist for the Department of the Army (DA) at the White Sands Missile Range, New Mexico. He responded to a DA civilian job opportunity announcement for a career position as a Telecommunications Specialist in its Information Management career program (entry level GS-5 or GS-7, with promotion potential to GS-11), which was to begin as a 2-year training program at Fort Sam Houston, Texas. He was accepted into the program and took a reduction to grade GS-7, executed a DA Employment and Mobility Agreement (DA Form 5227-R) and traveled to Fort Sam Houston to begin training. Although no travel authorization was issued to him for that move, he thereafter sought reimbursement for relocation benefits.

The agency denied his claim for the reason that the announcement to which he responded specifically provided that relocation expenses would not be paid and that permanent change-of-station (PCS) expenses would be the responsibility of the selectee. Further, the agency reports that Mr. Thrasher was advised orally that relocation expenses would not be paid. Our Claims Group sustained that disallowance.

Mr. Thrasher states that paragraph 4 of his Mobility Agreement provides that, if an individual is a current federal employee when selected for the intern program, initial PCS benefits are payable and that, since the Mobility Agreement he executed was his contract with the DA, it, in effect, superseded the job announcement. We do not agree with Mr. Thrasher's analysis.

The payment of travel, transportation, and relocation expenses of transferred employee is authorized under 5 U.S.C. §§ 5724 and 5724a (1988), as implemented by the Federal Travel Regulation (FTR), and supplemented by Volume 2 of the Joint Travel Regulations (2 JTR), for civilian employees of the Department of Defense and those of the military establishments. In our decision in Reconsideration of Eugene R. Platt, 61 Comp. Gen. 156 (1981), we recognized that, where an agency recruits or requests an employee to transfer to a different location, such transfer is normally regarded as being in the interest of the government and relocation expenses are payable and that, when an agency issues an announcement of an opening under its Merit Promotion Program, such action normally is deemed to be a recruitment action. However, we added that an agency may issue regulations concerning relocation expenses and merit promotions setting forth guidelines as to the specific conditions and factors to be considered in determining whether relocation expenses will be paid and that any such information must be clearly communicated in advance and in writing to all applicants, preferably by a statement on the vacancy announcement. If such a regulation is issued, we concluded as follows:

"[E]ach person who applies will do so with an understanding of the conditions under which relocation expenses will or will not be paid, and acceptance of an offer would be tantamount to accepting a condition of employment which the person could not successfully contest unless it was shown to be arbitrary or capricious, or contrary to the decisions of this office."¹

The Department of Defense (DOD) has issued such regulations. Volume 2, Joint Travel Regulations, provides in section C4100-2(c), effective February 2, 1991, that the DOD component should determine prior to advertising the vacancy whether

¹Reconsideration of Eugene R. Platt, *supra*, at 162.

PCS allowances will be paid so that this information is provided to applicants. If the decision is not to pay PCS allowances, the reasons will be documented by the appropriate official and all applicants selected for interview must be notified in writing of the decision.

As noted above, the job vacancy announcement here expressly stated that "relocation expenses will not be paid." Thus, each person who applied was on notice of the nonpayment of relocation expenses if the individual was selected for the position. We believe that the DOD regulation and the specific notice in the job announcement satisfied the conditions we outlined in Reconsideration of Platt, supra.

The language in the Mobility Agreement to which Mr. Thrasher refers, states in part that "initial PCS benefits will be provided under controlling regulations." Contrary to Mr. Thrasher's view, because the phrase "will be provided" is used, that phrase does not require payment. The "controlling regulations" are 2 JTR C4100-2(c) which establish agency discretion in the matter. We note that, in addition to the statement made in the job opportunity announcement, Mr. Thrasher was orally informed that relocation expenses would not be reimbursed and that no travel authorization was issued for his travel. Since the agency determined before the fact that PCS benefits would not be paid to employees who transferred to their telecommunications intern program and made a specific statement of intent in their job announcement, we find no basis to allow his claim. The prior action taken by our Claims Group in his case is sustained.

/s/Seymour Efras
for Robert P. Murphy
General Counsel