



Office of the General Counsel

B-254090

March 30, 1994

Mr. Don E. Hansen
Travel and Relocation Systems
Division, AAA-300
Office of Accounting
U.S. Department of Transportation
Federal Aviation Administration
800 Independence Avenue, S.W.
Washington, D.C. 20591

Dear Mr. Hansen:

This further responds to Mr. _____ appeal to our Claims Group of the FAA's denial of his request for relocation benefits incident to his permanent change-of-station from Hawthorne, California, to Inyokern, California, a distance of 155 miles. The transfer followed Mr. _____ promotion, effective October 22, 1992, from Supervisory Field Electronics Engineer, in which he was in travel status as much as 100 percent of his time, to Sector Field Office Manager, which involves little travel.

Because Mr. _____ has not moved and, consequently, has not submitted a voucher, we are not issuing a Comptroller General's decision at this time. However, the following information is provided for your consideration.

As we understand the facts, Mr. _____ lives in Quartz Hill, California, which is about 81 miles from his new duty station and about 74 miles from his old duty station. Your agency denied Mr. _____ request based on an agency regulation providing that, "Ordinarily, a relocation of the residence shall not be considered as incident to a change of official station unless the one-way commuting distance from the old residence to the new official station is at least 10 miles greater than from the old residence to the old official station." DOT 1500.6A, Para. 5-0102b. See also 41 C.F.R. § 302-1.7(a) (1993).

We have considered a number of cases in which an employee, who must constantly travel within a large area, does not live within the immediate vicinity of either the old duty station or the new duty station. See _____

B-215012, Dec. 4, 1984; , B-188706, Dec. 14, 1978; , B-184004, Apr. 27, 1976. In these cases, we have held that an employee who is in constant travel status may be reimbursed real estate expenses for the sale of a residence even though the employee did not regularly commute from that residence to the old duty station. Id.

The FAA agency disputes the applicability of those cases because Mr. was receiving 8 percent locality pay based on his assignment to Hawthorne, which is in the Los Angeles area, he was assigned a desk and a telephone there and he had to return there an average of 15 to 20 workdays a year when he was required to act in the capacity of the Area Installation Supervisor. However, in the cases cited above, the principal factor in determining whether an employee is in continuous travel status is whether the employee regularly commutes to the duty station. In this regard, the agency acknowledges that Mr. was in travel status 80-90 percent of the time and that he did not commute on a daily basis from his residence to the Hawthorne office.

Therefore, the respective distances between Mr. residence and his old and new duty stations is not, by itself, a bar to the payment of relocation benefits. However, to establish that his move is incident to the transfer, Mr. must move substantially closer to his new duty station. Compare , B-243501, Aug. 20, 1991 (a move of 3.5 miles is not incident to a transfer) and , B-224631, Sept. 17, 1987 (relocation expenses authorized where an employee relocated his residence from 60 miles to 30 miles from the new station).

Accordingly, we would not object to the authorization of relocation benefits to Mr. and payment provided that he actually relocates substantially closer to his new duty station.

Sincerely yours,



Robert L. Higgins
Associate General Counsel

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DIGEST

2. An agency asserted that an employee was not in a continuous travel status because he was receiving 8 percent locality pay based on the old duty station to which he was assigned, he was assigned a desk and a telephone there, and he acted in place of the supervisor in his absence.

However, the proper test to determine whether an employee is in a continuous travel status is whether the employee is unable to commute on a daily basis to the employee's duty station. The employee here meets that test because he spent 80 to 90 percent of his time in travel status.