



United States
General Accounting Office
Washington, D.C. 20548

Office of the General Counsel

B-230341

January 12, 1989

Dear Mr. :

This is in response to your claim for reimbursement of house sale expenses upon your transfer to a new duty station following reinstatement in the civil service after an erroneous separation. You also request that we sanction the agency for additional expenses incurred due to delays in the processing of your claim.

The record before us indicates that you were removed from your position with the Federal Aviation Administration in March 1982, but, upon appeal, you were reinstated by decision of the United States Court of Appeals for the Federal Circuit on January 17, 1986, with full benefits, back pay, and costs. Naekel v. Department of Transportation, 845 F.2d 976 (1986). During the period you were appealing the removal, you were employed by the U.S. Army in Wichita, Kansas, and you purchased a home in Mulvane, Kansas.

You were reinstated on June 1, 1986, at your former duty station in Longmont, Colorado, but you were on military leave and did not report for duty. Effective June 22, 1986, you were transferred from Longmont, Colorado, to Salt Lake City, Utah. You have not been allowed reimbursement for the expenses incurred in the sale of your Kansas home because it was not located in Colorado, your old FAA official duty station. You contend that you are entitled to reimbursement because Kansas, not Colorado, was your official duty station at the time of your transfer to Utah and because you never actually reported to your former FAA Colorado duty station.

Under the statutes and regulations governing relocation expenses, you are not entitled to reimbursement for the sale of your residence in Kansas incident to your transfer from Colorado to Utah. For purposes of these statutes and regulations, Colorado rather than Kansas must be regarded as your old duty station in connection with this transfer. Thus, the Kansas residence was not located at the old duty

station and was not the residence from which you regularly commuted to work at your old duty station.

, B-189998, Mar. 22, 1978. Copies of this and the other Comptroller General decisions cited herein are enclosed for your ready reference.

As to the question of paying relocation expenses incident to your reinstatement, we have held that the Back Pay Act, 5 U.S.C. § 5596 (1982), authorizes the payment of only those expenses which the employee would have received if the erroneous personnel action had not occurred.

, 63 Comp. Gen. 170 (1983). Thus, the Back Pay Act does not provide for the payment of incidental expenses incurred by the employee as a consequence of an unjustified or unwarranted personnel action.

B-184200, Apr. 13, 1976;

, B-182282, May 28, 1975.

Accordingly, there is no authority to support your claim for direct reimbursement of the expenses incurred in the sale of your Kansas home. We note, however, that the Court of Appeals for the Federal Circuit has allowed you certain relocation expenses in the form of an offset against the interim earnings to be deducted from your backpay award. Naekel v. Dept. of Transportation, 850 F.2d 682 (1988).

The court held:

"Mr. Naekel is entitled to set off against his interim earnings his documented job search expenses and those relocation costs that are normally reimbursed to agency employees transferred from one location to another, in this case from Kansas to Utah." 850 F.2d at 685-686.

In our opinion, this represents the only relief available to you for your move to Utah. It should be pursued in connection with the settlement of your backpay entitlement.

Finally, with regard to your request that we impose monetary sanctions against the FAA, we have held in the past that claims such as this for consequential or compensatory damages are claims sounding in tort premised on the alleged wrongful acts of government agents and, thus, are more appropriately addressed in court.

B-195558, Dec. 14, 1979. We are not authorized to award

consequential or compensatory damages under any statute or regulation that applies to this case.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "Henry R. Wray". The signature is fluid and cursive, with a long, sweeping underline that extends to the right.

Henry R. Wray
Senior Associate General Counsel

Enclosures