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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-144304

DATE: September 19, 1979

MATTER OF: Jack C. Stoller - Reconsideration

DIGEST: Employee who applied for position at Parris Island, South Carolina, seeks reconsideration of our decision upholding agency denial of relocation expenses. Employee contends that his transfer was under a merit promotion plan and, therefore, in the Government's interest. However, it appears that transfer was lateral to a position with no greater promotion potential than employee's former position. Thus, transfer was an exception to merit promotion plan. See B-173783.192, December 21, 1976.

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Mr. Craig T. Sawyer, as the attorney of Mr. Jack C. Stoller, submits additional information relating to Mr. Stoller's claim for relocation expenses incident to his transfer from Pearl Harbor, Hawaii, to Parris Island, South Carolina. Mr. Stoller's claim was denied by two decisions of this Office, Matter of Jack C. Stoller, B-144304, March 30, 1974, and October 4, 1977, based on the administrative determination that his transfer was not in the Government's interest. The facts of this case were fully stated in the previous decisions and will not be repeated here, except where necessary.

We are asked to reconsider the matter of Mr. Stoller's entitlement in light of the fact that he was selected for the position at Parris Island under the Department of the Navy's merit promotion plan and to conclude that his transfer, therefore, was for the benefit of the Government.

The contention that Mr. Stoller's selection for a merit promotion plan vacancy itself establishes his entitlement to reimbursement of relocation expenses appears to be based on the argument previously advanced by Mr. Stoller that the question of whether his transfer was in the interest of the Government is resolved by our holding in Matter of Stephen P. Szarka, B-188048, November 30, 1977. The Szarka case involved an Air Force employee who was transferred to fill a vacancy announced under a merit promotion plan. We there held that the Air Force had improperly refused to pay the employee's relocation expenses contrary to an

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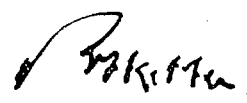
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Air Force instruction specifically requiring payment of permanent change of station costs "when an employee from outside the commuting area is selected under the merit promotion program."

We have held that a lateral transfer to a new position with, no greater promotion potential than the employee's former position constitutes an exception to the merit promotion plan under Civil Service regulations. See Matter of Ferdinando D'Alauro, B-173783.192, 21, 1976. Since it does not appear that Mr. Stoller's transfer involved a promotion or selection to a position having greater promotion potential, the holding of the Szarka decision is not applicable to this case.

Finally, Mr. Stoller's attorney submits a statement from an individual formerly employed at Parris Island to the effect that the activity rarely had sufficient funds to pay relocation expenses except where mandatory. He also refers to our decision Matter of David C. Goodyear, 56 Comp. Gen. 709 (1977), in which we held that budget constraints cannot form the basis for denial of relocation expenses. We do not consider that decision controlling in this case inasmuch as the record fails to show that Mr. Stoller was denied relocation expenses due to budget constraints.

Accordingly, we uphold our previous decisions denying Mr. Stoller's claim for relocation expenses incident to his transfer from Pearl Harbor to Parris Island.


Deputy Comptroller General
of the United States