

DECISION

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

FILE: B-183828

DATE: **JAN 23 1978**

MATTER OF:

Alfred H. Gaehler - Reimbursement of real estate expenses

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DIGEST:

Employee who was separated by reduction in force by NASA and employed after break in service of less than 1 month by term appointment with HEW, may be reimbursed expenses of selling house at NASA duty station since term appointment with HEW was "nontemporary appointment" and eligibility for relocation expenses arose under that section incident to RIF by NASA and employment by HEW.

This action concerns the claim of Alfred H. Gaehler, an employee of the Department of the Army, for reimbursement of real estate expenses under the circumstances described below,

Mr. Gaehler was employed at the Ames Research Center, Moffett Field, California, by the National Aeronautical and Space Administration (NASA), when he was the subject of a reduction-in-force (RIF) action, which terminated his position with NASA effective September 30, 1970. At the time, Mr. Gaehler was residing in Cupertino, California. Effective October 26, 1970, Mr. Gaehler received a term appointment to a manpower shortage position with the Department of Health, Education, and Welfare (HEW), in Sacramento, California. Pursuant to his appointment to the manpower shortage position, he was issued Travel Order No. PHS 374897, dated October 23, 1970, authorizing travel and transportation expenses for himself and his wife and also authorization for transportation of household effects from Cupertino to Sacramento. Subsequently, he transferred from HEW to his current position with the Army, effective September 19, 1971. Pursuant to the latter transfer, Mr. Gaehler was reimbursed for proper expenses, including lease-breaking expense incurred by him at his former duty station in Sacramento.

Mr. Gaehler now claims reimbursement for the expenses incurred in the sale of his residence at Cupertino on January 21, 1971. He first submitted his claim to the Army incident to his transfer from HEW to Army, and it was denied on the basis that the residence sold was not his residence when he was first officially notified of his transfer to the Army, as required by Office of Management and Budget

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Circular No. A-56, para. 4. 1d (September 1, 1971), and that his term appointment did not constitute a "nontemporary appointment" within the meaning of 5 U.S.C. § 5724a(c) (1970).

The fact that the Cupertino residence was not Mr. Gaehler's residence at the time he was first officially notified of his transfer was not a proper basis for denying reimbursement for the real estate expenses of the sale. In 51 Comp. Gen. 27 (1971), we stated that a former employee who is reemployed after a break in service of less than 1 year is entitled, pursuant to 5 U.S.C. § 5724a(c), to the same benefits he would have been entitled to had he transferred without a break in service. Accordingly, in that decision we held that the employee was entitled to reimbursement for travel expenses, real estate expenses incurred in the sale of his house, storage of his household effects, and other proper relocation expenses incurred prior to his reinstatement.

Notwithstanding the above, the Army is not liable to Mr. Gaehler for the expenses incurred incident to the sale of his residence on January 21, 1971.

Section 5724a(c) states:

"Under such regulations as the President may prescribe, a former employee separated by reason of reduction in force or transfer of function who within 1 year after the separation is reemployed by a nontemporary appointment at a different geographical location from that where the separation occurred may be allowed and paid the expenses authorized by sections 5724, 5725, 5726(b), and 5727 of this title, and may receive the benefits authorized by subsections (a) and (b) of this section, in the same manner as though he had been transferred in the interest of the Government without a break in service to the location of reemployment from the location where separated."

The applicability of this section specifically is limited to a "former employee" who is "reemployed" by the Federal Government. It is clear that at the time of his appointment with the Army, Mr. Gaehler was not a "former employee" of the Government who was

being "reemployed." Rather, Mr. Gaehler was already an employee who was transferring from one agency to another. Accordingly, section 5724a(c) is not applicable to Mr. Gaehler's transfer from HEW to Army, and he is not entitled to reimbursement pursuant to that transfer.

However, we are of the view that Mr. Gaehler's term appointment with HEW was a "nontemporary appointment" for the purpose of section 5724a(c) so that his reemployment by HEW, after being subjected to a reduction in force by NASA, would be within the scope of section 5724a(c). Although the legislative history of this provision is not definitive concerning this point, we believe that the term "nontemporary appointment" refers to appointments other than temporary limited appointments, which are defined in subpart D, part 316, of title 5, Code of Federal Regulations (1975), as appointments of 1 year or less.

Our rationale is as follows: Employees holding temporary limited appointments are not subject to reduction-in-force actions since they do not acquire tenure; rather, appointments of this type are terminated without following the RIF procedure when a RIF situation occurs in the agency. Thus, a person holding a temporary limited appointment could in no instance be covered by section 5724a(c) upon termination of his appointment since that section is applicable only to a "former employee separated by reason of reduction in force or transfer of function." (Emphasis added.) However, a person who is employed under a term appointment, an indefinite appointment, or a temporary appointment pending establishment of a register (TAPER) does acquire tenure and is subject to RIF procedures as outlined in part 351 of title 5, Code of Federal Regulations (1975). See, generally, Federal Personnel Manual, chapter 316 (1969). Therefore, upon being subjected to a RIF, an employee holding one of the three above-mentioned types of appointments would acquire eligibility under section 5724a(c) if he subsequently received another nontemporary appointment after a break in service of less than 1 year.

Accordingly, Mr. Gaehler may be reimbursed for the expenses incurred in the sale of his residence in Cupertino incident to his reemployment in the nontemporary appointment with HEW. This transaction is separate from his subsequent transfer from HEW to Army, incident to which he was properly reimbursed for lease-breaking expenses which he incurred.

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We have instructed our Claims Division to issue a settlement in the amount found due in accordance with this decision.

R.F.KELLER

~~Deputy~~ Comptroller General
of the United States