Douglas Faulkner
Civ.Pers.

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DECISION

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

FILE: B-186218 DATE: November 10, 1976

MATTER OF: William J. Elder and Stephen M. Owen - Relocation Expenses - Transfers for Training

DIGEST: Relocation allowances paid to employee transferred for training purposes are strictly limited by 5 U.S.C. § 4109 (1970). Fact that cognizant agency officials erroneously authorized reimbursement of expenses beyond these permitted by statute will not form basis for estoppel against Government. Although estoppel has been found in some cases where there is contractual relationship between Government and citizen, same doctrine is not applicable here because relationship between Government and its employees is not contractual, but appointive, in strict accordance with statutes and regulations.

This matter arises from a request for reconsideration of our Transportation and Claims Division letter, DWZ-2616543-DRM-3, of January 6, 1976, denying relief from the overpayment of relocation expenses to Mr. William J. Elder.

In August 1974, Mr. Elder entered the Civilian Logistics Intern Program, as a Safety Specialist. His initial duty station was Portsmouth, Virginia, and his organization was the Navy Fleet Material Support Office, Logistics Intern Development Center, Mechanicsburg, Pennsylvania. On September 25, 1974, Mr. Elder was issued a travel authorization authorizing his transfer from Portsmouth, Virginia, to the Naval Sea Systems Command Safety School, Bloomington, Indiana, for training, with a reporting date of December 2, 1974. On this travel order Mr. Elder was authorized reimbursement of the following expenses:

a house-hunting trip;
temporary quarters allowance for 10 days;
miscellaneous expenses;
dependents travel expenses; and
shipment of household goods.

Mr. Elder was given a $1,700 travel advance.

On January 26, 1975, Mr. Elder's travel claim was settled, and he was allowed reimbursement, inter alia, for the following items:

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| temporary quarters | $218.75 |
| miscellaneous expenses | 200.00 |
| dependents per diem | 78.12 |
| house-hunting per diem | 251.56 |
| house-hunting transportation | 394.94 |

By letter of September 13, 1975, from Mr. Larry A. Webb, Director, Logistics Intern Development Center, Mr. Elder was advised that under the provisions of paragraphs C3052 and C4102 of Volume 2 of the Joint Travel Regulations (2 JTR) he should not have been reimbursed for temporary quarters, miscellaneous expenses, dependents per diem, and house-hunting expenses, and that he was indebted to the Government in the total amount of $1,143.37.

During approximately the same period of time, Mr. Stephen M. Owen, now deceased, was also a participant in the Civilian Logistics Intern Program, and was also transferred to Bloomington, Indiana, for training. He was also authorized, by a travel authorization issued July 24, 1974, the full range of reimbursement granted to Mr. Elder. When his travel claim was settled on November 18, 1974, he was reimbursed, inter alia, for the following expenses:

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| temporary quarters | $131.25 |
| miscellaneous expenses | 100.00 |

By letter of September 13, 1975, from Mr. Larry A. Webb, Mr. Owen was also told, for the same reasons given Mr. Elder, that he should not have been paid the above listed expenses, and that he was indebted to the Government in the total amount of $231.25. We have been informally advised by Mr. Webb that Mr. Elder and Mr. Owen were the only participants in the Civilian Logistics Intern Program to be first authorized and paid these expenses, then advised that the authorizations were improper, and that they were indebted to the Government.

By letter of November 14, 1975, Mr. Elder applied to our Claims Division for relief from the debt stated above. Relief was denied in the January 6, 1976 letter cited earlier. By letter of February 5, 1976, from John M. Irvine, Esquire, Director of the Student Legal Services, Indiana University, Mr. Elder requested reconsideration of the January 6 letter. By letter of November 14, 1975, Mr. Owen sought relief from our Claims Division. His request was still pending when it was combined with Mr. Elder's case for decision and further action.

There does not seem to be any question that Mr. Elder's and Mr. Owen's assignments to Bloomington, Indiana, were primarily for the purpose of training. Payment of travel and transportation expenses relating to extended periods of training is governed by 5 U.S.C. § 4109 (1970) which provides, in pertinent part, that:

> "(a) The head of an agency * * * may--
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> * * * * *
>
> "(2) pay, or reimburse the employee for, all or a part of the necessary expenses of the training * * * including among the expenses the necessary costs of--
>
> "(A) travel and per diem instead of subsistence under subchapter I of chapter 57 of this title * * *;
>
> "(B) transportation of immediate family, household goods and personal effects, packing, crating, temporarily storing, draying, and unpacking under section 5724 of this title * * * when the estimated costs of transportation and related services are less than the estimated aggregate per diem payments for the period of training * * *."

The statutory provisions were implemented by paragraphs C4102 and C3052 of Volume 2 JTR. Those sections provide, in pertinent part, that:

"C4102 MOVEMENT INCIDENT TO TRAINING OR INSTRUCTION

"1. GENERAL. A permanent change of station may be authorized for employees who are assigned for training in Government or non-Government facilities (see par. C3052). This authority may be used only when the estimated costs of round trip transportation for dependents and household goods are less than the estimated aggregate per diem amount payable during the period of assignment at the training location. * * *

"2. INTERNS AND TRAINEES. In cases involving the permanent change-of-station movement of an 'intern' or 'trainee,' it is necessary to determine whether the purpose of the move is primarily for 'training' or primarily for the 'performance of work.' * * * If the assignment is determined to be primarily for training, the provisions of par. C3052 apply. * * *" (Change 75, December 1, 1971)

"C3052 ATTENDANCE AT TRAINING COURSES

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"2. OTHER THAN TEMPORARY DUTY ASSIGNMENT

"a. General. To the extent of the authority provided in 5 U.S. Code 4109, which allows transportation of an employee's family and household goods in lieu of per diem payments, the conditions in subpars. b and c will apply.

The provisions of this paragraph do not authorize the following:

"1. payment of per diem to employee's dependents for travel incident to training assignments under par. C4102;

"2. round trip travel to seek permanent residence quarters incident to permanent duty travel;

"3. payment of temporary quarters subsistence expenses incident to occupancy of temporary quarters in connection with permanent duty travel;

"4. reimbursement of miscellaneous expenses associated with discontinuing residence at one location and establishing residence incident to permanent duty travel;

"5. reimbursement for expenses incurred in connection with real estate transactions and unexpired lease.

"b. Transportation of an Employee's Family and Household Goods. If the estimated cost of round trip transportation of an employee's immediate family and household goods between the employee's official duty station and the training location is less than the aggregate per diem payments that the employee would receive while at the training location, such round trip transportation at Government expense may be authorized in lieu of per diem payments. Such transportation will be in accordance with the provisions in this volume relating to permanent change-of-station movement (see par. C4102).

"c. Employee's Election of Type of Movement. Consideration may be given an election of the employee concerned to be authorized a temporary duty assignment or a permanent change-of-station movement if allowable upon comparison of costs indicated in subpar. a. An initial determination to authorize a permanent change-of-station movement may be changed to a temporary duty assignment any time prior to the beginning of

transportation. After transportation begins, the entitlement of the employee and obligations of the Government become fixed and cannot be changed thereafter (39 Comp. Gen. 140)." (Change 78, April 1, 1972)

Prior to the entry of Mr. Elder and Mr. Owen into the Civilian Logistics Intern Program, Mr. Webb and the Logistics Career Management Steering Committee discussed the applicability of the above sections to transfers of logistics interns. They did not believe that there would be any transfers primarily for training purposes, nor did they believe that interns would be returned to former duty stations after transfers that involved some training. On that basis they were advised that the restrictions in the above sections of the JTR would not apply to transfers of logistics interns.

Throughout the spring and early summer of 1975, logistics interns were assured that the restrictions of 2 JTR paragraphs C3052 and C4102 did not apply to their transfers, so that they should request payment of all possible relocation benefits. In mid-July 1975, Mr. Webb learned that the assignments of logistics interns to Bloomington, Indiana, were primarily for training purposes, that the restrictions of paragraphs C3052 and C4102 applied, and that the interns would frequently be returned to their prior duty stations. No logistics interns other than Mr. Elder and Mr. Owen were paid travel benefits beyond those authorized by 5 U.S.C § 4109 (1970). Mr. Elder and Mr. Owen were advised of the overpayments and took the steps previously outlined.

From the statute and regulations it is clear that when an employee is transferred primarily for the purposes of training, relocation benefits are limited. Mr. Elder and Mr. Owen were transferred to Bloomington, Indiana, primarily for the purposes of training. They should not have been authorized the full range of relocation allowances that were listed in their travel orders.

Counsel for Mr. Elder argues that the doctrine of equitable estoppel applies. Essentially it is argued that the Federal Government may be estopped when it enters into ordinary contractual relations with its citizens, when the conditions required for the creation of an equitable estoppel are met. It is contended that

when the Government deals with its employees it is acting in its proprietary, not sovereign capacity, making the application of equitable estoppel proper. Finally, that the Government is not here trying to enforce a public right, only regulations not even published in the Code of Federal Regulations, and that an employee cannot be presumed to have knowledge of such regulations.

This analysis, while appealing, falls short on several points. First, the relationship between the Federal Government and its employees is not a simple contractual relationship. Since Federal employees are appointed and serve only in accordance with the applicable statutes and regulations, the ordinary principles of contract law do not apply. Hopkins v. United States, 513 F.2d 1360 (Ct. Cl. 1975). Even if the Federal Government is acting in its proprietary capacity when it deals with its own employees, in seeking to recover the money that was improperly paid to Mr. Elder and Mr. Owen, the Government is enforcing a public right. The basis for the collection action is not the regulations found in the Joint Travel Regulations, but the literal terms of 5 U.S.C. § 4109(a) (1970). That section explicitly limits the benefits payable to an employee who has been transferred primarily for the purposes of training. There is no doubt that Federal employees, and ordinary citizens, are presumed to know the contents of the United States Code. Federal Crop Ins. Corp. v. Merrill, 332 U.S. 380 (1947).

We believe the rule stated by the Supreme Court in Utah Power & Light Co. v. United States, 243 U.S. 389 (1917), is still correct:

> "* * * that the United States is neither bound nor estopped by acts of its officers or agents in entering into an arrangement or agreement to do or cause to be done what the law does not sanction or permit." (243 U.S. at 409)

This position was restated and followed in Montilla v. United States, 457 F.2d 978 (Ct. Cl. 1972). In that case, the plaintiff was seeking retired pay for service in the Army Reserves. He contended that the Government was estopped to deny him benefits based upon insufficient years of service in the active reserves, because he had relied on statements and letters from Army officials stating, or at least inferring that he had enough service in the active

reserves. In holding that the statutory service requirements must be strictly fulfilled, the court stated that:

> "It is true that the government may be estopped by the acts and conduct of its agents where they are duly authorized and are acting within the scope of their authority and in accordance with the power vested in them, as, for instance, in certain cases involving contractual dealings with the government. But we know of no case where an officer or agent of the government, such as Colonel Powell of the Army in the case before us, has estopped the government from enforcing a law passed by Congress. Unless a law has been repealed or declared unconstitutional by the courts, it is a part of the supreme law of the land and no officer or agent can by his actions or conduct waive its provisions or nullify its enforcement." (457 F. 2d at 986-987)

Just as the requirement for service in the active reserves could not be ignored in Dr. Montilla's case, the restrictions on relocation benefits payable for transfers for training purposes cannot be waived in the instant case. The following statement of the District Court in an unreported opinion in Koss v. United States, United States District Court for the District of South Carolina, Civil Action No. 73-1121, decided June 3, 1974, in declining to find an estoppel against the Government in a suit brought by a Federal employee, expresses our reaction to the present state of the law:

> "Reluctantly, this court has concluded that the only answer to prevent repetition of the injustice done to the plaintiff here, and to others who may later be similarly situated, must come from legislative and not judicial action. In the final analysis, this court is compelled to decree a result which it feels is legally correct but which, in fact, is absolutely contrary to all precepts of equity, fair play, and justice." (at page 10)

Accordingly, we have no choice but to affirm the denial of relief to Mr. Elder and Mr. Owen.

R.F. Keller

Acting Comptroller General
of the United States