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United States General Accounting Office
Washington, DC 20548

Office of
General Counsel

In Reply 8-192561
Refer to:

Entitlement to Official Travel Orders While on leave of Absence 10,452

Mr. T. Rivera, Director
Accounting Division (9AF)
Department of Housing and Urban
Development
Post Office Box 36003
San Francisco, California 94102

NO NOT BE AVAILABLE TO PUBLIC READING

June 13, 1979
per S. J. Gander
6/15/79

Dear Mr. Rivera:

Further reference is made to your letters dated January 31, and June 9, 1978, requesting an advance decision as to whether the Department of Housing and Urban Development (HUD) may properly issue official travel orders covering a trip taken from Bremerton, Washington, to Los Angeles, California, by Mr. Ralph H. Miller during a leave of absence in July 1977.

You indicate that immediately prior to July 1977 Mr. Miller was a resident of Bremerton, Washington, and was employed there by the Department of the Navy. On July 2, 1977, while on leave, he moved to temporary quarters in Pasadena, California, and began a search for Government employment in the Los Angeles area. On July 5, 1977, he applied for employment with the Los Angeles HUD office in response to a notice of position vacancy issued by that activity. His application to HUD was accepted on July 11, 1977, and he then resigned from his position with the Department of the Navy in the State of Washington.

On September 19, 1977, Mr. Miller submitted a request to HUD that official travel orders be issued authorizing travel and relocation allowances for a permanent change of station move from Bremerton, Washington, to Los Angeles, California. However, HUD authorities disapproved *the employee's* Mr. Miller's request after making a preliminary determination that his move from Washington to California was primarily a matter of personal convenience.

Mr. Miller has expressed disagreement with that determination in several communications addressed to you about



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the matter. He has said that although he traveled from Washington to California and brought along a portion of his household goods before he applied for a position with HUD in Los Angeles on July 5, 1977, he was still an employee of the Navy Department at the time. He did not resign from his Navy position until his application to HUD was accepted, and if he had not been accepted by HUD he definitely would have returned to Washington and would have kept his position with the Navy. In effect, he has suggested that such a transaction should be regarded as an "interagency transfer" performed for the convenience and best interest of the Government, and for which travel and relocation allowances could be paid.

In addition, Mr. Miller has contended that he should not be denied travel and relocation allowances simply on the basis that he initiated his move from Washington to California. In that connection, he says he has personal knowledge of several employees who have been transferred essentially at their own request and at Government expense. Also, he says that during his earlier military career as a member of the United States Marine Corps he applied for certain assignments involving transfers, e.g., to be a drill instructor, etc., and those transfers were approved and performed at Government expense.

Your request for an advance decision presents the question of whether HUD has any lawful authority to change the preliminary determination made in Mr. Miller's case and to issue official travel orders to him, in light of his contentions in the matter.

The Comptroller General renders advance decisions to certifying officers pursuant to 31 U.S.C. 82d, which states that certifying officers:

"* * * shall have the right to apply for and obtain a decision by the Comptroller General on any question of law involved in a payment on any vouchers presented to them for certification."

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Thus, when a certifying officer has doubts about the legality of an expenditure which he has been asked to certify, he should request a decision from the Comptroller General under 31 U.S.C. 82d. See Matter of Responsibilities and Liabilities of Certifying Officers, 55 Comp. Gen. 297 (1975). However, before such a decision is appropriate, the certifying officer must have been asked to certify the payment. Obviously, that must be preceded by an internal agency decision to incur the expense listed on the voucher. Since no voucher has been presented for payment in the case of Mr. Miller, a decision of the Comptroller General will not be issued at your request in the matter.

However, we present the following information for your guidance.

Provisions of law governing the travel entitlements of Federal civilian employees are contained in chapter 57 of title 5, United States Code. With respect to the travel and transportation expenses of employees transferred, 5 U.S.C. 5724(a) provides in pertinent part as follows:

"(a) Under such regulations as the President may prescribe and when the head of the agency concerned or his designee authorizes or approves, the agency shall pay from Government funds--

"(1) the travel expenses of an employee transferred in the interest of the Government from one official station or agency to another for permanent duty
* * *" (Emphasis added.)

Implementing statutory regulations are currently contained in the Federal Travel Regulations (FTR), i.e., Federal Property Management Regulation 101-7 (May 1973), issued by the General Services Administration. Para. 1-1.4, FTR, provides that all official travel must be authorized or approved, and that ordinarily an authorization shall be issued prior to the incurrence of the

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expenses. In addition, para. 2-1.3, FTR, provides in pertinent part as follows with regard to a change of official station made primarily for the convenience or benefit of the employee or at his request:

"* * * When change of official station or other action described below is authorized or approved by such official or officials as the head of the agency may designate, travel and transportation expenses and applicable allowances as provided herein are payable in the case of (a) transfer of an employee from one official station to another for permanent duty, Provided That: the transfer is in the interest of the Government and is not primarily for the convenience or benefit of the employee or at his request; * * *"

Our Office has consistently expressed the view that it is within the sound discretion of the employing agency to determine in any given case whether a transfer is in the interest of the Government or is primarily for the convenience of the employee. See Matter of David Goodyear, 56 Comp. Gen. 709 (1977); and Matter of Josef D. Prall, B-191482, November 7, 1978. In a proper case, it may be permissible to approve an employee's transfer as being in the Government interest, even though it appears the transfer might also serve the employee's personal needs or interests. Matter of Carolyn J. McDowell, 54 Comp. Gen. 892 (1975). We will not question the correctness of an agency's discretionary determination as to whether an employee's transfer is in the Government interest or primarily in the employee's own interest, unless it appears that the determination is arbitrary and capricious, lacks any basis in fact, or is otherwise clearly erroneous. See Matter of William D. Vogel, B-187825, February 11, 1975.

In the present case, there is no indication that Mr. Miller left his employment with the Navy Department in Bremerton, Washington, on account of any reason induced by the Government. Moreover, it is not indicated that the Navy Department was consulted in the matter of Mr. Miller's

application for employment with HUD in Los Angeles, or that the concerned Navy Department and HUD authorities acted jointly in advance to approve an interagency transfer of Mr. Miller in the interest of the Government. Instead, based on the information submitted, it appears that Mr. Miller traveled from Washington to California in July 1977 on an ordinary leave of absence to seek another Government position solely for his own purposes, to satisfy his personal desire to move to the Los Angeles area.

With respect to Mr. Miller's contentions in the matter, it is to be noted that this Office and the courts have long followed the basic general rule that travel allowances authorized by statute for Federal civilian employees and members of the uniformed services are for the purpose of reimbursing them for the expenses of travel induced by the Government, not for expenses of travel performed for reasons of personal convenience and benefit. See Matter of Dr. James L. Sutphen, 57 Comp. Gen. 201 (1978); and Perrimond v. United States, 19 Ct. Cl. 509 (1884). An employee or service member may properly apply for a particular assignment, and may then be transferred at Government expense if the application is approved as being in the Government interest. Matter of Carolyn J. McDowell, 54 Comp. Gen. 892, supra. On the other hand, travel by a civilian employee or serviceman during an ordinary leave of absence, or travel to a new duty station under permissive orders granted primarily to accommodate the individual's personal desires, must be regarded as travel performed for personal convenience and benefit for which the Government is not responsible. See Matter of Captain James D. Harmon, Jr., USA, B-172848, July 27, 1971. Thus, as Mr. Miller has pointed out, there are circumstances in which a civilian employee or serviceman may apply for an assignment and then be transferred at Government expense if the reassignment is approved as being in the Government interest. However, the job-hunting trip he took in July 1977 was evidently ordinary leave travel performed solely for reasons of personal convenience and benefit. His subsequent employment by HUD and resignation from the Navy Department was apparently in the nature of a permissive transfer to accommodate his personal desires.

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In the circumstances described, there does not appear to be any factual basis which might support a determination that Mr. Miller's July 1977 job-hunting trip during a leave of absence was in the interest of, or was induced by, the Government. It was therefore evidently correct for HUD officials to make the preliminary determination that the travel was primarily a matter of personal convenience. Any contrary determination would appear to be subject to challenge as being erroneous, capricious, and without any basis in fact on the limited record submitted.

We trust this will serve the purpose of your inquiry.

Sincerely yours,

Edwin J. Monsma
Assistant General Counsel