Mr. Easterwood

118954

DECISION

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

FILE: B-205892 DATE: July 13, 1982

MATTER OF: Thelma B. Van Horn

DIGEST: An overseas employee of the Army, transferred to the United States but did not remain in Government service for 1 year after her transfer, may not be paid relocation benefits incident to her transfer that are in excess of her entitlement to return travel and transportation expenses to her place of actual residence in the United States. A service agreement--the usual pre-condition for receiving relocation benefits--was not executed and no intent to fulfill a 1-year commitment upon return may be inferred from the facts of the case.

The question in this case is whether a recently retired employee of the Army may be paid relocation benefits incident to a transfer from overseas to the United States that are in excess of the return travel and transportation expenses to the designated place of actual residence in the United States even though the employee did not execute an agreement to remain in Government service for at least 1 year after her transfer. Since we cannot infer that the employee intended to satisfy the service requirement at the time of transfer in this case, the failure to execute a service agreement precludes payment of those relocation benefits even though the employee was purportedly released from the requirement.

The Finance and Accounting Officer of the Army's White Sands Missile Range presented the question through the Office of the Comptroller of the Army. The matter was assigned control number 81-37 by the Per Diem, Travel and Transportation Allowance Committee.

The employee, Mrs. Thelma B. Van Horn, was transferred from Zweibruecken, Germany, to White Sands Missile Range, New Mexico, in November of 1980. The form that authorized her transfer travel indicated that she had signed an agreement to remain in Government service for 1 year after beginning work at White Sands. Some of her relocation benefits, including transportation of household goods, travel, and a miscellaneous expense allowance

that she claimed immediately after the transfer, were paid on the assumption that she had signed such a service agreement.

Mrs. Van Horn returned from Germany in November 1980 and traveled to California where she remained on leave until the latter part of January 1981 when she reported for work at White Sands. She retired in February 1981, approximately 6 weeks after beginning work at White Sands, and returned to California to help her husband in a business he had purchased there. After her retirement the Civilian Personnel Officer at White Sands made a routine check of her personnel file to see whether the relocation benefits already paid would have to be refunded because of a violation of the service agreement. Also pending at this point were unpaid claims for additional relocation benefits that were submitted just before Mrs. Van Horn's retirement--a temporary quarters allowance and the expenses of picking up an automobile at the port. The Personnel Officer found that Mrs. Van Horn had been overseas long enough to earn eligibility under 5 U.S.C. § 5724(d) (1976) for reimbursement of return travel and transportation expenses to her actual residence in the United States. But, he found that some other of the relocation expenses she received upon her return from Germany, such as a temporary quarters allowance and miscellaneous expenses payment, would normally be treated as an indebtedness upon her failure to fulfill the assumed service agreement. However, based upon what he indicated as his office's failure to counsel Mrs. Van Horn regarding the 1-year service obligation and his assumption that she had signed a service agreement, the Civilian Personnel Officer stated, "In view of the above, it is determined that an early release from the transportation agreement is approved, and the indebtedness of Mrs. Thelma B. Van Horn is waived."

When the Finance and Accounting Officer at White Sands was considering whether to pay Mrs. Van Horn's additional claims for a temporary quarters allowance and expenses of picking up her automobile at the port in view of the Civilian Personnel Officer's release from an assumed service agreement, he found that Mrs. Van Horn had never in fact signed a service agreement. He therefore questioned his authority to pay these claims even though he

allowed the Civilian Personnel Officer's purported release to relieve Mrs. Van Horn from indebtedness for relocation expenses already paid.

While there is no statutory requirement for execution of a service agreement incident to a transfer from overseas to the United States, we have held that an agency has authority to refuse to authorize or approve payment of any relocation expenses in connection with the transfer until the employee concerned executes an agreement to remain in the Government service for a specified period of time. See Matter of Dickey, 60 Comp. Gen. 308 (1981); and 47 Comp. Gen. 122 (1967). The regulations applicable to the Army implementing the statutory provisions of 5 U.S.C. §§ 5724(d) and 5722 are found in Volume 2, Joint Travel Regulations. For entitlement to transportation allowances in connection with transfers from overseas to the United States these regulations specifically provide that such allowances:

> "* * * will not be authorized unless and until the employee concerned will agree in writing to remain in the Government service for 12 months following the date of reporting for duty at the new permanent duty station, unless separated for reasons beyond his control which are acceptable to the agency concerned. * * *" Volume 2, Joint Travel Regulations, paragraph C4103-2(a). See also paragraph C4002-1(4).

This is the same type of agreement that the Army requires for its transfers within the United States. Regarding transfers within the United States, we have held that the agency's failure to bring the service agreement requirement to the attention of the employee would not constitute a waiver of the requirement. Where the service agreement requirement was not complied with and the employee did not serve the required 12 months, we have required the disallowance of certain relocation benefits that had been claimed and collection of amounts paid the employee to which he was, consequently, not entitled. See B-178595, June 27, 1973.

In the present case, by completing her agreed tour of duty in Germany, Mrs. Van Horn became entitled to reimbursement for expenses of travel and transportation for herself, her family and household goods to her actual place of residence in the United States or to her new duty station, whichever is less expensive. But by failing to execute a service agreement, and not serving the required 12 months at White Sands, she could not be paid the additional relocation benefits in excess of these expenses, such as a temporary quarters allowance.

The Army points out that an agency's release from the required period of service is viewed as preserving any rights the employee had contingent upon fulfilling his service agreement. See Matter of Real Estate Expenses, B-180406, July 10, 1974. And we have held that the granting of a release is primarily for the agency to determine. Matter of Pozek, B-191081, July 26, 1978. However, in the Real Estate Expenses case, the employee had signed a service agreement, the pre-condition for entitlement to relocation benefits, so he had rights to be preserved. In this case Mrs. Van Horn signed no service agreement, and the Civilian Personnel Officer's release, based upon an assumed agreement that in fact did not exist, could not by itself preserve relocation rights that were precluded by the regulations from being created.

Where an employee is fully aware of the requirement for a written service agreement as the basis for reimbursement of relocation benefits incident to a transfer but refuses to sign one, the relocation benefits that would normally accrue with a transfer are denied because the intent to fulfill the 1-year service agreement has not been demonstrated. See Matter of Mulhern, B-187184, March 2, 1977. The view has also been expressed by the courts and this Office, however, that where it is clear that there was an intent to meet the requirements of a statute or regulation and substantial performance of the requirements is accomplished, the omission of a requirement, such as the filing of an exemption or execution of a written agreement, would not necessarily preclude entitlement to authorized benefits. See Methodist Home and Hotel Corp. v. United States, 291 F. Supp. 595

(S.D. Tex. 1968); Matter of Variable Incentive Pay Contracts, B-192338, September 19, 1978. However, the facts in this case preclude us from finding that Mrs. Van Horn clearly intended to satisfy the 1-year service agreement requirement.

First, we must consider that, for whatever reason, Mrs. Van Horn did not execute a service agreement. Also, after nearly 2 months of leave taken in California before reporting for duty at White Sands, she actually worked at White Sands for only about 6 weeks before retiring.

Accordingly, consistent with the Dickey decision, her constructive return expenses must be limited to those applicable to her actual place of residence in the United States, El, Paso, Texas. Since Mrs. Van Horn has apparently been reimbursed her family's travel and transportation expenses to her new duty station in White Sands, any claimed relocation expenses in excess of the constructive return expenses may not be paid, and any relocation expenses that were paid in excess of those constructive expenses should be collected. Her expenses for picking up her automobile at the port should be considered and reimbursed, if otherwise proper, under chapter 11 of Volume 2, Joint Travel Regulations.

for Milton J. Socolar
Comptroller General
of the United States