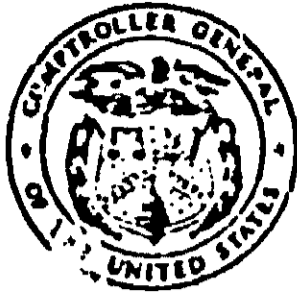


DECISION



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

FILE: B-205958

DATE: July 13, 1982

MATTER OF: John J. Hertzke - Relocation Expenses

DIGEST: Employee transferred from Zweibruecken, Germany, to Ogden, Utah, claims relocation expenses on basis that transfer to new position could be considered to be in the interest of the Government. However, although position was advertised under a vacancy announcement issued pursuant to agency's merit promotion program, position at Ogden was at a lower grade with no greater promotion potential. Thus, his appointment was exception to merit promotion under Office of Personnel Management regulations. Moreover, employee desired to relocate to Ogden area and was advised that his request for release from his overseas transportation agreement was disapproved and that he would not be reimbursed costs of transfer. Therefore, the claim must be denied.

The issue in this case is whether Mr. John Hertzke's transfer was in the interest of the Government so that he may be entitled to relocation expenses incident to a change of his permanent duty station. For the reasons stated below we hold that Mr. Hertzke is not entitled to relocation expenses.

Mr. Hertzke was the Command Security Officer, GS-12, for the Defense Subsistence Region, Europe (DSRE), a subordinate activity of the Defense Logistics Agency (DLA). During July 1981, Mr. Hertzke learned of and applied for an announced vacant position as Command Security Officer for the Defense Depot, Ogden, Utah (DDOU), also a subordinate activity of DLA. That position was announced by vacancy announcement #204, dated July 17, 1981, issued pursuant to the agency's Merit Promotion Plan and was a GS-11 position with no additional promotion potential. Mr. Hertzke's desire to relocate apparently stemmed from two concerns. First, Mr. Hertzke's place of domicile was near Ogden; he owned a home in the area which was occupied at the time by two of his children; and he intended to

live there upon retirement from Federal service. Second, Mr. Hertzke was concerned that his position at DSRE might eventually be eliminated because the workload was not sufficient to justify a full-time criminal investigator.

Upon learning that he had been selected for the position at DDOU, Mr. Hertzke requested to be released from a transportation agreement entered into when he began employment with DSRE. He was advised by DSRE on August 28, 1981, that this request was denied and that if he chose to resign his position, no DSRE funds would be available to pay for his return to the United States. In August 1981, Mr. Hertzke also requested DDOU to pay his relocation expenses. This request was also denied.

Although Mr. Hertzke's requests for assistance with his relocation expenses were denied by both his losing and gaining activities, he still accepted the position with Ogden effective August 30, 1981, and traveled there at his own expense. By letter dated September 18, 1981, he renewed his request that DDOU reimburse him the expenses of his move, including air fare, the costs of shipping and insuring his household goods, and miscellaneous expenses. The basis for the September 18 request was paragraph C4100 of the Joint Travel Regulations, volume II. This renewed request was neither approved nor denied; rather, the claim was forwarded to the General Accounting Office through the Per Diem Travel and Transportation Allowance Committee (Control No. 81-39), without recommendation.

Reimbursement of travel and relocation expenses upon an employee's change of station under 5 U.S.C. §§ 5724 and 5724a (1976) is conditioned upon a determination by the head of the agency concerned or his designee 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. In this connection see paragraph 2-1.3, Federal Travel Regulations, FPMR 101-7 (May 1973) (FTR). See also Michael J. DeAngelis, B-192105, May 16, 1979; and Paul J. Walski, B-190487, February 23, 1979. In this regard paragraph C4100 of the Joint Travel Regulations (JTR), volume II implementing that statute, provides in pertinent part as follows:

"1. GENERAL. Travel and transportation expenses may be allowed any employee when it is in the interest of the Government to fill a position by movement of a current employee from one duty station to another within or outside the continental United States. * * * A permanent change-of-station movement will not be authorized at Government expense when it is primarily for the benefit of the employee or at his request. If the movement is determined not to be in the interest of the Government, the employee will be informed prior to the movement as to his responsibility for payment of travel and transportation expenses."

Subparagraph 2 of the same regulation sets out eight examples of movements that are considered to be in the interest of the Government. Mr. Hertzke's claim for reimbursement of expenses is not predicated upon any one of these specific examples, but rests, rather, on what he terms the inference to be drawn from the regulation that his movement could be considered in the interest of the Government.

Although both the Federal Travel Regulations and the JTR contemplate that the agency will make a determination as to whether the transfer is in the Government's interest, neither regulation furnishes any guidance as to the factors to be considered in making that determination. In order to assist agencies, we offered the following guidance in Dante P. Fontanella, B-184251, July 30, 1975:

"Generally, however, if an employee has taken the initiative in obtaining a transfer to a position in another location, an agency usually considers such transfer as being made for the convenience of the employee or at his request, whereas, if the agency recruits or requests an employee to transfer to a different location it will regard such transfer as being in the interest of the Government. Of course,

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if an agency orders the transfer and the employee has no discretion in the matter, the employee is entitled to reimbursement of moving expenses."

See Rosemary Lacey, B-185077, May 27, 1976, where the guidance is set forth.

In applying the Federal Travel Regulations and our guidance to specific cases, we have recognized that the determination of whether a transfer is in the interest of the Government or primarily for the convenience or benefit of the employee or at his request is primarily a matter within the discretion of the employing agency. Philip E. Schaeffer, B-186684, February 2, 1977; Dante P. Fontanella, *supra*; and B-143845, July 26, 1961. We do not believe that we should overturn an agency's determination unless it is arbitrary or capricious or clearly erroneous under the facts of the case.

In Ferdinando D'Alauro, B-173783.192, December 21, 1976, we considered a situation involving a transfer under a Merit Promotion Vacancy Announcement in circumstances similar to the present case. The Customs Service, Mr. D'Alauro's employing agency, had denied his travel and transportation expenses because the transfer was primarily for his benefit and at his request. In his appeal to this Office, Mr. D'Alauro contended that the transfer was under the Merit Promotion Plan which would entitle him to relocation expenses under Custom Service policy. However, since Mr. D'Alauro's reassignment was a lateral transfer to a position with no greater promotion potential than his former position, we agreed with the agency that his reassignment was considered as being outside the Merit Promotion Plan. Accordingly, we sustained the agency's determination that his transfer was for his own convenience, and denied relocation expenses.

The relevant Office of Personnel Management regulations providing for merit promotion programs are found at chapter 335, Federal Personnel Manual. Specifically, subchapter 1-5c states in part that:

"c. Agencies may at their discretion except other actions from their plans. These include, but are not limited to:

* * * * *

"(3) A position change from a position having known promotion potential to a position having no higher potential."

Thus, since Mr. Hertzke's reassignment to the position at Ogden was to a lower graded position than his former position, his reassignment may be considered to be outside of the Merit Promotion Plan.

The Defense Logistics Agency (DLA) viewed Mr. Hertzke's transfer as essentially being at his own request, and the record clearly shows that the employee initiated and accepted the transfer primarily for personal reasons. We agree with the determination by the agency that the transfer of Mr. Hertzke was not in the interest of the Government and was primarily for his convenience and at his request. Accordingly, we hold that the claimed travel and transportation expenses are not allowable.

for 
Comptroller General
of the United States