

DECISION

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

FILE: B-206048

DATE: June 28, 1982

MATTER OF: James Schoenberger

DIGEST: Individuals selected for appointment to Senior Executive Service (SES) may be paid travel and transportation expenses for relocation to the duty station at which the new position is located even if they travel before actually being appointed. Such individuals, however, do not have a vested entitlement until actual appointment. Thus, where an individual selected for SES position incurred relocation expenses prior to appointment he may not be reimbursed these expenses when ultimately he was appointed to a grade 15, and not an SES position.

An authorized official of the Department of Housing and Urban Development (Department) requests an advance decision whether Mr. James Schoenberger is entitled to receive travel and transportation expenses that are authorized for a new appointee to the Senior Executive Service (SES). Although selected for an SES position, Mr. Schoenberger ultimately was appointed to a non-SES position because the Department had filled all SES positions before his appointment. Since the entitlements in question vest upon appointment to an SES position and not upon selection, Mr. Schoenberger may not be reimbursed his travel and transportation expenses.

In 1981, Mr. Schoenberger while not employed by the Government, was recruited and selected for the position of Associate Deputy Assistant Secretary in the Office of Multifamily Housing in Washington, D.C. This required his relocation from St. Louis, Missouri, to Washington. In anticipation of his appointment, he relocated to Washington in April 1981, incurring some \$4,000 in moving expenses.

Upon arrival in Washington, Mr. Schoenberger was retained as a consultant by the Department pending the processing of his appointment. Upon the completion of the administrative processing, Mr. Schoenberger, however, was not appointed to an SES position. The Department of Housing and Urban Development had already appointed individuals

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to all non-career SES positions allocated to the Department. The Department's request that the Office of Personnel Management allocate an additional SES position for Mr. Schoenberger was not granted. Thus, in October 1981 Mr. Schoenberger was appointed to the position of Associate Deputy Assistant Secretary of the Department at grade 15.

New appointees to SES positions, like new appointees to manpower shortage positions, are entitled to travel expenses and transportation of their immediate families and their household goods and personal effects. 5 U.S.C. § 5723(a) (Supp. III, 1979). An agency may pay the travel and transportation expenses authorized, even if the individual selected for a manpower shortage or SES position has not been appointed at the time of travel. 5 U.S.C. § 5723(c) (Supp. III, 1979).

Although we recognize that an individual selected to the SES may receive travel and transportation expenses even if not appointed at the time of travel, the individual's entitlement does not vest by virtue of selection or authorization for travel. Since the statute authorizes travel and transportation expenses for "new appointees to the Senior Executive Service," entitlement vests only upon actual appointment. Indeed, the regulations implementing 5 U.S.C. § 5723 provide that travel and transportation expenses are available for new appointees to the SES, not selectees. Federal Travel Regulations, para. 2-1.5f(a-1) (FPMR Temp. Reg. A-11, June 29, 1979, and FPMR A-20, September 28, 1981).

This conclusion is consistent with several cases concerning the substantially identical authority of 5 U.S.C. § 5723 to pay travel and transportation expenses of new appointees to manpower shortage positions. For example, in one case two individuals were purportedly appointed to manpower shortage positions and authorized travel and transportation expenses. Upon realizing that the new appointees were not in manpower shortage positions, the employing agency asked us to decide if the individuals could be reimbursed their travel and transportation expenses. We stated that since neither of the appointees was appointed to a manpower shortage position, there was no authority to reimbursing them for the expense of moving to their first duty station. Matter of Ehrmann and Fullilove, B-194032, June 19, 1979. See also Matter of Pakis, B-195616, February 14, 1979.

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Finally, in the submission, the Department asks us to consider if our decision, B-174092, November 19, 1971, would be authority to pay Mr. Schoenberger. In that case, an individual selected to a manpower shortage position traveled to Washington, D.C., from North Dakota. Unknown to the individual, his appointment had been cancelled. In considering whether he could be reimbursed travel expenses to Washington, D.C., and back to North Dakota, we noted that the individual's travel expenses to Washington "were authorized under the shortage category provisions of 5 U.S.C. 5723." That statement refers to the fact that the claimant was directed to report for duty and advised that his travel and transportation expenses would be reimbursed since he was to be appointed to a manpower shortage position. It was not intended to suggest that a selectee to a shortage position is entitled to travel and transportation expenses even though he never was appointed to a shortage category position. In that case we approved payment of the travel expenses under the authority to reimburse round-trip travel expenses for the purpose of a preemployment interview. Thus, that case has no applicability and provides no basis to pay the travel and transportation expenses incurred by Mr. Schoenberger.

James R. Chan
for Comptroller General
of the United States