

DECISION**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548**1/10/84
P.M. II
29692**FILE:** B-215398**DATE:** October 30, 1984**MATTER OF:** John E. Seagriff**DIGEST:**

Relocation expenses for changing duty stations are reimbursable only if the receiving and losing agencies meet the definition of "agency" under 5 U.S.C. 5721(1). Since a nonappropriated fund activity is not such an "agency," its employee is not entitled to relocation expenses upon transfer to a civilian position with the U.S. Army.

Mr. John E. Seagriff, a civilian employee of the Army, is not entitled to relocation expenses, because at the time he changed jobs he was employed by a nonappropriated fund activity rather than a Federal "agency" as defined in 5 U.S.C. 5721(1).^{1/}

While working for a nonappropriated fund activity at Keesler Air Force Base, Biloxi, Mississippi, Mr. Seagriff accepted a Federal Civil Service appointment with the Army at Letterkenny Army Depot, Chambersburg, Pennsylvania. Because of an administrative error, he received a travel authorization and assurance that the Government would pay his relocation expenses. However, after he reported for duty at Letterkenny Army Depot in September 1983, he was informed that he would not be paid, since his previous position had been with a nonappropriated fund activity at Keesler Air Force Base.

Sections 5724 and 5724a of title 5, United States Code, which authorize an agency to pay transferred employees travel and transportation expenses, various allowances, and relocation expenses, are limited by section 5721(2) to apply only to "an individual employed in or under an agency." Thus, an individual's entitlements under these statutes are predicated on the requirement that the agency from which he

^{1/} The Finance and Accounting Officer, Letterkenny Army Depot, requested this advance decision, and the Per Diem, Travel and Transportation Allowance Committee assigned the request PDTATAC Control No. 84-12.

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transfers and the agency to which he transfers are within the statutory coverage. See Stephen E. Goldberg, B-197495, March 18, 1980; B-164854, August 1, 1968. The term "agency" is defined in section 5721(1) as follows:

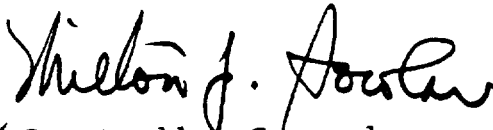
- "(1) 'agency' means--
 - "(A) an Executive agency;
 - "(B) a military department;
 - "(C) a court of the United States;
 - "(D) the Administrative Office of the United States Courts;
 - "(E) the Library of Congress;
 - "(F) the Botanic Garden
 - "(G) the Government Printing Office; and
 - "(H) the government of the District of Columbia; but does not include a Government controlled corporation; * * *"

Although for some purposes nonappropriated fund activities are considered instrumentalities of the Government, they are generally self-supporting and do not receive appropriated funds from the Congress. Thus, for the purpose of receipt and disbursement of funds, including payment to their employees, they have not been considered Federal agencies. See 58 Comp. Gen. 94 (1978); 43 Comp. Gen. 431, 434 (1963). Furthermore, employees of nonappropriated fund instrumentalities under the jurisdiction of the armed forces are not employees for the purpose of laws administered by the Office of Personnel Management, with certain exceptions not relevant here. See 5 U.S.C. § 2105(c).

Accordingly, employees of a nonappropriated fund activity are not employed by an "agency" within the meaning of 5 U.S.C. 5721(1) and are not entitled to relocation expenses when they change their residences because of their transfer to such "agency."

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While it is unfortunate that Mr. Seagriff was given erroneous advice concerning relocation and travel entitlements, we are unaware of any authority under which he may be paid for these expenses. It is well settled that the Government cannot be bound beyond the actual authority conferred upon its agents by statute or regulations. See Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380, 384 (1947); Edgar T. Callahan, B-210657, May 25, 1984.

for 
Comptroller General
of the United States