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The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: F. William Eikenberry - Back Pay Act - Temporary
Duty Travel Expenses Incident to Erroneous Transfer
File: B-223306
Date: October 23, 1986

DIGEST

An employee stationed in Cheyenne, Wyoming, accepted a demotion and transfer to Denver, Colorado. His family remained in the Cheyenne area and he commuted to Denver. Following the transfer, he appealed that action to the Merit Systems Protection Board. The Board ruled in his favor and required the agency to restore him to his former position and location with backpay. He now claims temporary duty travel expenses for the period, contending that, since the transfer was improper, his permanent duty station remained in Cheyenne and his duty in Denver was temporary. The claim is denied. Remedial action restoring an employee to old position and location does not convert the new station from permanent to temporary, even though expenses incurred were incurred because of the erroneous transfer. The only remedy available to recompense losses sustained due to unwarranted personnel actions is 5 U.S.C. § 5596 which limits recovery to pay, allowances and differentials.

DECISION

This decision is in response to a request from an Authorized Certifying Officer, Bureau of Land Management (BLM), Department of the Interior, concerning the entitlement of an employee to be reimbursed for lodging, meals, and travel expenses during the period June 14, 1982, to March 17, 1985. We hold that he is not so entitled for the following reasons.

BACKGROUND

Mr. F. William Eikenberry, a BLM employee, was the Associate State Director (GM-15) in the agency's Cheyenne, Wyoming, office. In early 1982, he was given a directed reassignment from that position to a Staff Assistant position at the GM-15 level in Washington, D.C. In lieu of that reassignment, Mr. Eikenberry elected to accept a transfer to the Denver

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Service Center, Lakewood, Colorado, which involved a reduction in grade to a position at the GS-13 level. That transfer was effective on or about June 14, 1982.

Following that transfer, Mr. Eikenberry appealed BLM's action to the Merit Systems Protection Board (MSPB), asserting that his reassignment was an involuntary action. The Denver Regional Office of MSPB agreed with Mr. Eikenberry and issued an initial decision reversing the agency action.^{1/} The agency filed a petition for review and the Board upheld the initial decision on January 29, 1985. The Board's specific findings were:

1. The agency failed to establish legitimate management reasons for appellant's directed reassignment to Washington, D.C.;
2. The reassignment was ordered by agency officials to cause appellant to resign or be subject to disciplinary action; and
3. management's actions resulted in appellant's involuntary downgrade to the GS-13 position in Denver.

Based on those findings, the BLM was ordered to cancel appellant's demotion to the GS-13 Denver position and to retroactively restore him to a GM-15 position. The agency, in turn, offered Mr. Eikenberry a position at the GM-15 level in Washington, D.C., or in Denver. On February 12, 1985, Mr. Eikenberry appealed that action asserting that neither position was the equivalent to the GM-15 position he held in Cheyenne. By action dated June 5, 1985, the Board's Regional Director ordered the BLM to restore Mr. Eikenberry to the associate director position in Cheyenne, Wyoming, or an equivalent position in the Cheyenne commuting area, with backpay retroactive to the date of his demotion and reassignment.

Following restoration to the associate director position in Cheyenne, Mr. Eikenberry asserted his claim for travel, lodging and meals during the period June 14, 1982, to March 17, 1985. His claim is based on the premise that, since the reassignment to Denver was improper, his permanent duty station remained in Cheyenne and his service in

^{1/} Case No. DEO 75282C0252, September 11, 1984.

the Denver office was a temporary duty assignment which carries with it travel expense reimbursement rights.

OPINION

The theory of entitlement asserted by Mr. Eikenberry is not new. We have previously considered similar arguments in connection with improper transfers and downgradings. See David C. Corson, B-182282, May 28, 1975; Ernest F. Gonzales, B-184200, April 13, 1976; Jimmy N. Morris, B-188358, August 10, 1977; Marie R. Streeter, B-191056, June 5, 1978; and Anthony A. Esposito, B-197023, March 14, 1980. We have consistently held that the remedial action of restoring an employee to his old position and location is not a basis for converting the time spent at the duty station to which transferred from permanent duty to temporary duty.

Our ruling in Jimmy N. Morris, cited above, became the subject of litigation in the United States Court of Claims. The decision of the court upheld the government's position that the remedy available to an employee found to have undergone an unjustified or unwarranted personnel action to recompense him for losses sustained was through the Back Pay Act, 5 U.S.C. § 5596, which limits recovery to the pay, allowances or differentials that an employee would have received had the unwarranted personnel action not been taken. Morris v. United States, 595 F.2d 591 (Ct. Cl. 1979). The court concluded in that case that the plaintiff's claim for temporary duty travel, lodging and meal expenses which were incurred as a consequence of his erroneous transfer are not reimbursable. In that connection the court went on to say:

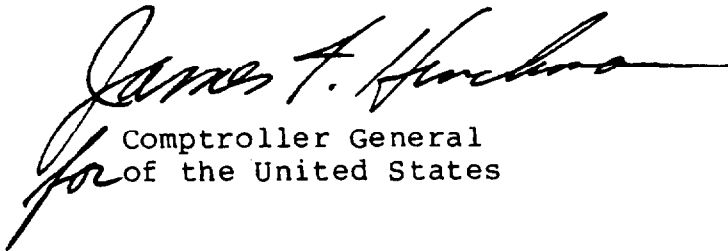
"[T]he irony of this case is that if plaintiff had decided to relocate his family * * * [to his new duty station] and hence obviated the need to commute back and forth * * * [those expenses] would have been fully reimbursed. * * *"
595 F.2d at 594-595.

The same would be true in the present case. All transfers from one duty station to another for permanent duty, in the interest of the government and without a break in service, carry with them the right to be reimbursed relocation expenses under 5 U.S.C. § 5724 and 5724a. If, at the time Mr. Eikenberry was transferred to Denver, he had actually

disestablished his residence in the Cheyenne area and moved his family to the Denver area, the expenses of relocation would have been reimbursed. Upon being restored to his position in Cheyenne, relocation expenses for his return to Cheyenne would also have been payable. Mr. Eikenberry chose not to relocate. Instead, he chose to maintain his family residence in Cheyenne and to commute between there and Denver.

Mr. Eikenberry also argues that his claim is not based on the Back Pay Act, but is instead for expenses incurred by reason of an illegal act. He contends that Supreme Court rulings show that such expenses are reimbursable in order to make the employee whole for the economic injury and to secure complete justice. We cannot agree. While the basis upon which an ordered transfer of duty station may be later established as an improper personnel action, the right to relief from the government for such action is prescribed by statute. The Court of Claims has ruled that the Back Pay Act provides the remedy available to an employee to recover losses caused by improper personnel actions. Morris v. United States, cited above.

Therefore, on the facts before us, there is no basis upon which Mr. Eikenberry's claim may be allowed.


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