The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Harold W. Brown - Transportation of Household Goods Between Overseas Locations

File: B-229393

Date: April 1, 1988

DIGEST

Employee separated in 1982 is not entitled to reimbursement for the cost of shipping his household goods from Madrid to Paris incident to his separation. Although the holding in Thelma Grimes, 63 Comp. Gen. 281 (1984), authorizes shipment of household goods to any alternate destination, provided the cost to the government does not exceed the constructive cost of shipment to the employee's place of actual residence, that decision applies prospectively to cases in which the employee's separation was effected after April 10, 1984. The fact that the employee's claim was before the General Accounting Office on that date does not provide a basis for payment.

DECISION

Mr. Harold W. Brown, a former employee of the Department of Defense, appeals from the May 31, 1984, settlement of our Claims Group denying his claim for reimbursement of the $4,460 cost of shipping his household goods between Madrid, Spain, and Paris, France. For the reasons stated below, the disallowance of Mr. Brown's claim is sustained.

BACKGROUND

In December 1981, in anticipation of his separation from employment with the Department of Defense, Mr. Brown requested authorization for transportation of his household goods at government expense from his duty station in Madrid, Spain, to Paris, France, where he intended to reside. Orders were issued on January 13, 1982, authorizing transportation from Madrid to Silver Spring, Maryland, Mr. Brown's place of actual residence at the time of assignment to duty outside the United States. On February 4, 1982, however, Mr. Brown's household goods were shipped to Paris. The following week, he received a letter

in response to his earlier inquiry informing him that there was no authority for the Department of Defense to pay transportation expenses between points outside the United States when an employee, upon separation, elects not to return to the United States or to the country of his actual residence at the time of employment.

Subsequent to Mr. Brown's separation, the $4,460 amount incurred by the Department of Defense in shipping his household goods to Paris was deducted from his final lump sum leave payment. In February 1983, Mr. Brown submitted a claim for this amount to our Claims Group. By Settlement Certificate No. Z-2847424, dated May 31, 1984, the Claims Group denied his claim, stating that there was no authority to pay for shipment of his household goods to a destination outside the United States.

In appealing the Claims Group's disallowance, Mr. Brown cited our holding in Thelma Grimes, 63 Comp. Gen. 281 (1984), as authority for payment of his claim. He notes that this decision was issued on April 10, 1984, approximately 6 weeks before the Claims Group disallowed his claim, and that it allowed reimbursement under circumstances very similar to his own.

ANALYSIS

Reimbursement of travel and transportation expenses incurred by an employee upon return from an overseas post of duty is provided for by 5 U.S.C. § 5722 (1982). Insofar as pertinent, subsection 5722(a)(2) authorizes an agency to pay the expenses of transporting household goods "on the return of an employee from his post of duty outside the continental United States to the place of his actual residence at the time of assignment to duty outside the United States." Until April 10, 1984, we consistently had interpreted this statute as precluding payment of the employee's expenses for moving his household goods between two points outside the United States where the employee, upon separation from the service, elected not to return to the United States or to the country of his place of actual residence at the time of employment. See, e.g., B-170172, July 31, 1970; 31 Comp. Gen. 389 (1952).

Based on arguments presented by the claimant in the Grimes case, we changed the above construction of 5 U.S.C. § 5722(a)(2). For separations effected after that decision was issued on April 10, 1984, civilian employees, upon separation overseas, are now allowed reimbursement for travel and transportation to any alternate point of destination, whether within or outside the United States, provided the cost to the government does not exceed the constructive

cost to the employee's place of actual residence. The reasons for that changed interpretation are fully set forth in 63 Comp. Gen. 281, supra. In so holding, we specifically stated:

> "Since this conclusion represents a changed construction of the statute on our part, we shall give it prospective application only, effective as of the date of this decision, except as to Mrs. Grimes. See George W. Lay, 56 Comp. Gen. 561, 566 (1977)."

Mr. Brown points out that on April 10, 1984, when the Grimes decision was issued, his claim was pending within the General Accounting Office. Given the similarity in the circumstances of his case and the Grimes case, he agues that the disallowance of his claim was unfair.

We recognize that the circumstances giving rise to Mr. Brown's claim are substantially similar to those considered in the Grimes case. The Grimes decision, however, represents a changed interpretation as opposed to an original interpretation of 5 U.S.C. § 5722(a)(2) and, consistent with judicial precedents and precedents of this Office, is to be given effect on a prospective basis only. We have consistently applied its holding to cases in which the former employee was separated subsequent to the date that decision was issued, April 10, 1984. See, e.g., 65 Comp. Gen. 468 (1986).

There are several policies and interests to be weighed in determining whether a decision is to be made effective retrospectively or prospectively. The case of George W. Lay, 56 Comp. Gen. 561, supra, involved a changed interpretation of an unbroken line of precedents concerning reimbursement of attorney fees. In determining to apply that case on a prospective basis, we considered it particularly significant that agencies had justifiably relied on that unbroken line of precedents in adjudicating the claims of transferred employees. We stated:

> ". . . prospective application of our decision of today will foster stability since it will avoid the necessity of opening claims which might have gone stale because of a failure to promptly investigate. Accordingly, since this decision represents a substantial departure from our previous interpretation of the Federal Travel Regulations, and involves the overruling of many precedents on which reliance had justifiably been placed, the rules set forth above are prospective only and may not be applied where the settlement

> date for the transaction for which reimbursement is claimed is prior to the date of this decision. 54 Comp. Gen. 890 (1975); id. 1042 (1975).

In the Grimes case, we relied on this same rationale in determining to apply its holding on a prospective basis to separations occurring after April 10, 1984. The single exception was Mr. Grimes whose particular case served as the vehicle by which the changed construction of 5 U.S.C. § 5722(a)(2) came about. In allowing Mr. Grimes to recover, we relied on precedents typified by the Lay decision allowing recovery by the party to the landmark decision. In Lay, we stated:

> "In the case of Mr. Lay, however, our decision of today will be applied retrospectively to his claim only. This application is in recognition of the validity of his arguments and of the fact that his claim constitutes the vehicle by which our interpretation of the Federal Travel Regulations has been altered."

We recognize that there may be a number of former federal employees who were separated prior to April 10, 1984, who had filed claims similar to Ms. Grimes with their former agencies or the General Accounting Office at the time we rendered our decision in the Grimes case. In the interest of bringing finality to the adjudication process, we have declined to allow recovery in case of separations effected prior to April 10, 1984, even though the individual claim had been filed prior to that date. See, e.g., Clarence R. Hill, B-204286, June 12, 1984.

Because our holding in the Grimes case is for prospective application only, it does not provide a basis to pay Mr. Brown's claim which arose in connection with his separation effected prior to April 10, 1984. Neither the fact that the claimant in the Grimes case was permitted to recover nor the fact that Mr. Brown had filed his claim with the General Accounting Office prior to April 10, 1984, provides a basis for recovery. The denial of his claim is, therefore, sustained.

Milton J. Socolar

for Comptroller General
of the United States