



**The Comptroller General  
of the United States**

Washington, D.C. 20548

*Heitzman*

## **Decision**

**Matter of:** Nina R. Mathews - Age Discrimination/Title VII  
Resolution Agreement - Compensatory Damages

**File:** B-237615

**Date:** June 4, 1990

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### **DIGEST**

Employee may not be reimbursed for economic losses pursuant to a resolution agreement made under the Age Discrimination in Employment Act and/or Title VII of the Civil Rights Act since there is no authority for reimbursement of compensatory damages under either statutory authority. Further, employee may not be placed on administrative leave with pay for an extended period, and there is no authority for payment of travel and relocation expenses where the employee was transferred for retirement purposes. Erroneous overpayments may be subject to waiver.

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### **DECISION**

The issue we are presented is whether pursuant to a resolution agreement made under the Age Discrimination in Employment Act of 1967, as amended, and/or Title VII of the Civil Rights Act of 1964, as amended, a complainant may be reimbursed in the form of compensatory damages for economic losses incurred as a result of failure to relocate the complainant under an agency's spousal placement program.<sup>1/</sup> The claim is denied since there is no authority for reimbursement of compensatory damages under either statutory authority.

### **BACKGROUND**

Ms. Nina R. Mathews was employed by the Forest Service in Klamath Falls, Oregon, as a grade GS-12 when in 1987 she applied for and was denied a position in Washington, D.C., at a grade GS-13 level. Since Ms. Mathews's husband had been transferred to Washington, D.C., in October 1987, she

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<sup>1/</sup> The decision was requested by an authorized certifying officer for the United States Department of Agriculture, Forest Service, Washington, D.C.

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took a grade GS-12 position with the Department of the Navy in Philadelphia in order to be near her husband.

Subsequently, Ms. Mathews filed an age and sex discrimination complaint against the Forest Service in which she alleged a failure to relocate her under a spousal placement program, while alternatively selecting an allegedly less-qualified younger male for a position for which she applied, under the same spousal placement program.

Pursuant to the resolution agreement, which became effective July 5, 1989, Ms. Mathews was granted backpay and a promotion from GS-12 to GM-13 effective in May 1988. In addition, she was transferred on August 1, 1989, from her position with the Navy in Philadelphia to a GM-13 position in Washington with the Forest Service. This was a "paper transfer," however, since Ms. Mathews was immediately placed on administrative leave for 11 pay periods (880 hours) pending application for a discontinued service retirement which was granted effective December 30, 1989. Ms. Mathews was also reimbursed \$3,453.75 for relocation expenses from Philadelphia to Washington.

The specific provision of the resolution agreement that we have been asked to consider states:

"1. The agency agrees to reimburse the complainant \$4,080.00 for losses incurred in connection with the sale of her residence in Klamath Falls, Oregon."

#### OPINION

The General Accounting Office has no authority to review the merits of cases brought under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, et seq., or the Age Discrimination in Employment Act of 1967, 29 U.S.C. § 621, et seq. However, we may determine the legality of awards agreed to by agencies in informal settlement of discrimination complaints, based upon our authority to determine the legality of expenditures of appropriated funds. Albert D. Parker, 64 Comp. Gen. 349 (1985); Equal Employment Opportunity Commission, 62 Comp. Gen. 239 (1983).

The \$4,080 claim here has been characterized as a loss incurred in connection with the sale of a residence at the employee's former duty station in Oregon, although it actually represents 6 months rent for an apartment in Philadelphia. However, regardless of its characterization, the claim is not related to backpay and is in excess of the gross amount of backpay Ms. Mathews lost. Albert D. Parker,

supra, at 353. Thus, the claim is in the nature of compensatory damages and it is well settled that there is no authority to reimburse federal employees for compensatory damages in Age Discrimination in Employment Act and Title VII cases. Smith v. Office of Personnel Management, 778 F.2d 258 (5th Cir. 1985), cert. denied, 106 S. Ct. 1949 (1986); Rattner v. Bennett, 701 F. Supp. 7 (D.D.C. 1988); Grandison v. U.S. Postal Service, 696 F. Supp. 891 (S.D. N.Y. 1988); Wilkins v. Walters, 571 F. Supp. 474 (N.D. Ohio 1983); Harris v. United States Department of Treasury, 489 F. Supp. 476 (N.D. Ill. 1980); Carter v. Marshall, 457 F. Supp. 38 (D.D.C. 1978). The cases cited by Ms. Mathews's counsel in support of her contention that compensatory damages are appropriate in age discrimination cases are inapposite here since they involve nonfederal employees. E.g., Flynn v. Morgan Guaranty Trust Co. of N.Y., 463 F. Supp. 676 (E.D. N.Y. 1979). Therefore, Ms. Mathews's claims for compensatory damages in the amount of \$4,080 is denied.

Regarding the placement of Ms. Mathews on administrative leave for 11 pay periods, we are unaware of any legal basis where, pursuant to a resolution agreement, an employee can be placed on extended administrative leave with pay. There is no general authority under which federal employees may be excused from their official duties on administrative leave without loss of pay or charge to leave. It has been recognized that, in the absence of specific statutory authority, the head of an agency may, in certain situations, excuse an employee for brief periods of time without a charge to leave or loss of pay. However, where absences are for a lengthy period of time, a grant of administrative leave is not appropriate unless the absence is in connection with furthering a function of the agency. Navy Department, 66 Comp. Gen. 639 (1987); 63 Comp. Gen. 542 (1984). See also, 5 C.F.R. § 610.305 (1988). Further, the fact that the administrative leave was granted in settlement of a personnel claim does not alter the result. See Albert D. Parker, supra. Therefore, the Forest Service was in error when it placed Ms. Mathews on administrative leave with pay for 11 pay periods without any expectation that she would perform any work in Washington, D.C.

Likewise, we know of no authority under which Ms. Mathews may be reimbursed for relocation expenses for a transfer from Philadelphia to Washington, D.C., which never took place. The head of an agency can authorize or approve payment of the travel and relocation expenses of an employee transferred in the interest of the government to another agency for permanent duty. 5 U.S.C. § 5724 (1988). However, payment cannot be made when a transfer is made

primarily for the convenience or benefit of an employee. 5 U.S.C. § 5724(h) (1988). Moreover, an agency may pay travel and transportation expenses only after the employee agrees in writing to remain in the government service for 12 months after the transfer, unless separated for reasons beyond his control that are acceptable to the agency concerned. 5 U.S.C. § 5724(i) (1988).

In this case the sole purpose of the transfer was to place the employee in a position, without any expectation of necessary and substantial duty, prior to approval of a discontinued service retirement. Thus, the purpose of Ms. Mathews's transfer was for her benefit and not in the interest of the government so as to entitle her to reimbursement for travel and relocation expenses. Nor did she execute and comply with the requisite 12-month service agreement. James D. Belknap, B-188597, June 17, 1977. C.f., 46 Comp. Gen. 724 (1967).

Accordingly, the Forest Service was without authority to place Ms. Mathews on extended administrative leave with pay and to reimburse her for travel and relocation expenses. Therefore, such amounts should be collected back from her. However, to the extent such amounts represent an erroneous overpayment of pay, and of travel transportation and relocation expenses, the claim may be subject to waiver in accordance with established principles. 5 U.S.C. § 5584 (1988); 4 C.F.R. § 92 (1989).



Acting Comptroller General  
of the United States