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**DECISION**



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

FILE: B-195180

DATE: October 24, 1979

MATTER OF: Cathryn P. White - Relocation service agreement -  
Creditable service

**DIGEST:**

1. The 12-month Government service obligation required by 5 U.S.C. § 5722(b)(2) and FTR 2-1.5a(1)(b) is a statutory condition precedent to [payment of relocation expenses incident to change of official duty station] to Alaska. Thus, employee may be bound by 12-month service obligation even though she did not execute a service agreement, and where employee has been continuously employed for a 12-month period following a transfer, the condition precedent is satisfied and a service agreement need not be executed. See cases cited.
2. Employee bound by 12-month service obligation incident to transfer of official station to Alaska served 10 months and was then granted 3 months leave without pay by agency. Although she resigned at conclusion of leave without pay period, employee is entitled to specified travel and relocation expenses incident to transfer since time spent in leave without pay status is creditable time in Government service within the meaning of 5 U.S.C. § 5722(b)(2) and employee fulfilled 12-month service obligation.

This action is in response to a request for a decision sub-<sup>DLG03131</sup>mitted by the Director, Financial Management Division, U.S. Customs Service, Department of the Treasury, as to the propriety of payment of a voucher for reimbursement of expenses incurred in the sale of a residence by Ms. Cathryn P. White, a former employee of the Customs Service, incident to a transfer. The agency has refused payment on the voucher on the basis that the former employee apparently did not agree in writing to remain in the service of the United States for 12 months as required by statute, and she did not in fact remain in Government service for 12 months following her change of official duty station. The agency further requests a determination as to whether it may properly seek recovery of additional amounts reimbursed to Ms. White in the form of travel and relocation expenses paid in connection with Ms. White's transfer.

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The record indicates that Ms. White was transferred on March 26, 1978, from Tampa, Florida, to Anchorage, Alaska, in connection with her continued employment with the Customs Service. Ms. White reported at her new duty station effective March 27, 1978. In January 1979, Ms. White requested and was granted leave without pay for 3 months effective beginning January 28, 1979. Ms. White resigned from the Customs Service - and presumably from all Government service - effective April 29, 1979.

The agency states that while the payment of expenses incident to Ms. White's transfer of official duty station on March 26, 1978, was approved, she apparently either failed to provide the required 12-month Government service agreement or it was lost, but in either case the agreement cannot be located. As a result the agency contends that the voucher representing expenses incurred in the sale of her residence in connection with Ms. White's change of official station is not properly payable because she failed to provide a written service agreement. In addition the agency contends that in any event Ms. White did not fulfill the 12-month Government service agreement because her time spent in a leave without pay status did not constitute creditable service in terms of the required agreement. In view of these contentions the agency believes that the submitted voucher is not payable and previous amounts reimbursed for travel and relocation expenses incident to the transfer in question should be recovered.

Pursuant to the analysis which follows we hold that if the voucher and previous payments are otherwise proper, the voucher may be certified for payment and no collection action is required.

Section 5724(d) of title 5 of the United States Code provides that when an employee transfers to a post of duty outside the continental United States - which pursuant to section 5721(3) of that title includes Alaska - his or her expenses of travel and transportation to and from the post shall be allowed to the same extent and with the same limitations prescribed for a new appointee under section 5722 of title 5 of the United States Code. Thus the primary statutory basis for requiring the execution of a service agreement in Ms. White's case is found in the following provisions of 5 U.S.C. § 5722:

"(a) Under such regulations as the President may prescribe and subject to subsections (b) and (c) of this section, an agency may pay from its appropriations—

"(1) travel expenses of a new appointee and transportation expenses of his immediate family and his household goods and personal effects from the place of actual residence at the time of appointment to the place of employment outside the continental United States; and

"(2) these expenses 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.

"(b) An agency may pay expenses under subsection (a)(1) of this section only after the individual selected for appointment agrees in writing to remain in the Government service for a minimum period of—

\* \* \* \* \*

"(2) 12 months after his appointment, if selected for appointment to any other position; unless separated for reasons beyond his control which are acceptable to the agency concerned. If the individual violates the agreement, the money spent by the United States for the expenses is recoverable from the individual as a debt due the United States.

"(c) An agency may pay expenses under subsection (a)(2) of this section only after the individual has served for a minimum period of—

\* \* \* \* \*

"(2) not less than one nor more than 3 years prescribed in advance by the head of the agency, if employed in any other position; unless separated for reasons beyond his control which are acceptable to the agency concerned. These expenses are payable whether the separation is for Government purposes or for personal convenience."

In addition, section 5724a of title 5 comprehensively provides for payment of relocation expenses of employees transferred under section 5724 of that title under such regulations as the President may prescribe.

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Subsection 5724a(a)(4) specifically provides for the reimbursement of certain expenses for the sale of the residence of the employee.

Pursuant to sections 1(4) and (7) of Executive Order No. 11609, July 22, 1971, the authority of the President under 5 U.S.C. § 5722(a) and 5724a was delegated to the Administrator of General Services. Regulations implementing the above statutory provisions appear in the Federal Travel Regulations, FPMR 101-7, May 1973 (FTR), as amended. Thus, the service requirements relative to Ms. White's entitlement to relocation allowances are contained in the following pertinent parts of FTR 2-1.5a(1)(b) and (c):

"(b) Transfers, appointments, and separations involving posts of duty outside the conterminous United States. The expenses of travel, transportation, moving and/or storage of household goods, and applicable allowances as provided in these regulations in connection with the transfer or appointment of employees to posts of duty outside the conterminous United States, \* \* \* shall not be allowed unless and until the employee selected for such transfer or appointment agrees in writing to remain in the service of the Government for 12 months following the effective date of the transfer or appointment unless separated for reasons beyond his control and acceptable to the agency concerned. In case of a violation of such an agreement, including failure to effect the transfer, any funds expended by the United States for such travel, transportation, and allowances shall be recoverable from the individual concerned as a debt due the United States. Except as precluded by these regulations upon separation from service the expenses for return travel, transportation, moving, and/or storage of household goods shall be allowed whether the separation is for the purposes of the Government or for personal convenience. However, such expenses shall not be allowed unless the employee transferred or appointed to posts of duty outside the conterminous United States shall have served for a minimum period of not less than 1 nor more than 3 years prescribed in advance by the head of the agency \* \* \* or unless separation is for reasons beyond the control of the individual and acceptable to the agency concerned. \* \* \*

"(c) Employee liability for each agreement. The agreement to remain in the service of the Government for 12 months following the effective date of transfer is not voided by a subsequent transfer whether such subsequent transfer is at

the employee's request or in the interest of the Government, nor is such agreement voided by another service agreement made in connection with a second transfer. The liability of the employee for any funds expended by the United States for his travel, transportation, and relocation allowances is a separate liability for each service agreement. The liability in each instance is effective for the full 12 month period in connection with the transfer for which the service agreement was made."

The 12-month Government service obligation created by the provisions of 5 U.S.C. § 5722(b)(2) and implemented by FTR 2-1.5a(1)(b) is not contractual, but is a statutory condition precedent to payment of relocation expenses. See 54 Comp. Gen. 71 (1974). In this sense it is the obligation to serve the Government for 12 months following the effective date of the transfer - rather than the physical evidence of an agreement - which controls the employee's entitlement to the relocation allowances provided by statute. Thus an employee may be bound by the 12-month service obligation even though she did not execute a Government service agreement. Therefore, where an employee has in fact been continuously employed for a 12-month period following a transfer, the condition precedent has been satisfied, and a service agreement need not be executed. Szarka, B-188048, November 30, 1977. We have also concluded that absent the execution of a service agreement or the actual satisfaction of the 12-month service obligation, there is no authority for an employee to receive or retain relocation expense reimbursement. 57 Comp. Gen. 447 (1978). In view of this reasoning it is clear that, while Ms. White may not have been originally entitled to relocation expenses if in fact she failed to execute a 12-month Government service agreement, the presence or absence of such an agreement no longer controls her entitlement. Rather, the controlling issue is whether or not Ms. White actually satisfied the 12-month Government service obligation.

Under the facts presented in Ms. White's case she would have satisfied the 12-month Government service obligation had she remained in the Government service for 12 months dating from March 27, 1978. Ms. White resigned from the Customs Service effective April 29, 1979, an inclusive period of over 13 months following the effective date of her transfer. However the agency contends that since Mr. White was in a leave without pay status for 3 months, beginning January 28, 1979,

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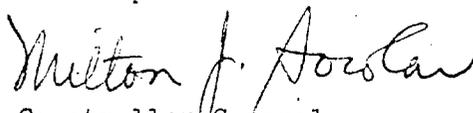
she failed to fulfill the 12-month Government service obligation because time spent in a leave without pay status does not constitute creditable service in the computation of the required 12-month period.

We have held that the leave without pay status of a civilian employee of the United States is partially creditable for certain purposes, such as retirement, step increases and leave; and, that an employee in such status remains on the rolls of the Federal agency as an employee until he is separated from the service. In these circumstances the employee may be regarded as "in the Government service" within the meaning of that term as it appears in the statute which requires an agreed period of service. 45 Comp. Gen. 680 (1966).

We have further held that an employee on leave without pay remains in the Government service as indicated in our decision in 45 Comp. Gen. 680, supra, notwithstanding the reasons which the agency deemed sufficient to justify placing him in that status. Engstrom, B-184948, November 18, 1975. In that decision we evaluated the situation where a transferred employee executed a service agreement by which he agreed to remain in the Government service for 12 months subsequent to reporting at his new duty station. After reporting, the employee was granted leave without pay which was later extended at his request, beyond the expiration of his agreed period of service. Although the employee was thereafter separated for abandoning his position, he was not liable for repayment of otherwise compensable relocation expenses advanced to him incident to transfer because, adhering to our decision in 45 Comp. Gen. 680, supra, we concluded that time spent in a leave without pay status is time in service within the meaning of 5 U.S.C. § 5724(i) (1970) and the service agreements executed pursuant to it.

In accordance with the above reasoning Ms. White's period of time in a leave without pay status from January 28, 1979, to the effective date of her resignation on April 29, 1979, constituted creditable service within the meaning of 5 U.S.C. § 5722(b)(2) and she fulfilled her 12-month Government service obligation.

The voucher may be certified for payment in accordance with this decision if otherwise proper and no action should be made to recover previously reimbursed relocation expenses.



For The Comptroller General  
of the United States