

DECISION

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

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FILE: B-185077

DATE: MAY 27 1976

MATTER OF: Rosemary Lacey - Relocation expenses

DIGEST:

Employee appealed disallowance by our Claims Division of relocation expenses incurred in move requested by employee from Chicago, Illinois, to Miami, Florida. Agency approved transfer on condition that employee pay relocation expenses. After the move, made without travel orders, employee filed claim for expenses contending relocation was in Government interest. Based on the record and agency determination that transfer was at employee's request and not primarily in Government interest, we held that no entitlement to relocation expenses was established under paragraph 2-1.3, Federal Travel Regulations (FPMR 101-7, May 1973). Hence, we sustained disallowance.

This action concerns an appeal, by Paul A. Tennenbaum, Attorney, on behalf of Ms. Rosemary Lacey, an employee of the Department of Health, Education, and Welfare (HEW), for reconsideration of a settlement certificate dated August 29, 1975, issued by our Claims Division that disallowed Ms. Lacey's claim in the amount of \$950 for travel and transportation expenses incident to her July 1974, transfer from the HEW health unit in Chicago, Illinois, to the HEW health unit in Miami, Florida. Her claim was disallowed on the basis that the transfer was made at her specific request and was not primarily in the interest of the Government.

In a parallel action to her claim, which she filed with our Claims Division by letter of June 5, 1975, Ms. Lacey filed an informal grievance with her agency covering this matter on July 22, 1975, which was denied. On August 11, 1975, the employee filed a formal grievance which was referred to a grievance examiner who conducted an exhaustive inquiry on the employee's complaint and rendered a report dated March 22, 1976, that contained findings and conclusions regarding the grievance and recommended that all requested relief be denied. The deciding official accepted the examiner's recommendation by decision dated April 6, 1976.

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The facts and circumstances surrounding this case may be summarized as follows. While assigned as a Registered Nurse in the HEW Chicago Health Unit, Ms. Lacey submitted a memorandum dated March 22, 1974, through channels to the Chief Clinical Service Branch which read:

"Request for Transfer

"Request is hereby made for transfer in the [Public Health Service, Division of Federal Employee Health] PHS/DFEH Health Unit in Chicago, Illinois, to the PHS/DFEH Health Unit in Miami, Florida, or San Francisco, California."

The record indicates that the area Nurse Supervisor discussed the request with the Chief Nurse on April 1, 1974, and advised Ms. Lacey that currently no position was available and that she would be considered for any future available position at the requested locations, however the cost of the transfer would be Ms. Lacey's responsibility. The area Nurse Supervisor states that Ms. Lacey agreed to this arrangement. On May 30, 1974, the Chicago Health Unit was informed that a nurse position would be available in Miami, Florida, in the immediate future and Ms. Lacey was offered the position. On June 7, 1974, she submitted a letter formally accepting the Miami position. The Medical Officer-in-charge of the health unit met with Ms. Lacey on July 1, 1974, to discuss her transfer to Miami which was scheduled to be effective as of July 7, 1974, and requested that she sign a statement acknowledging that she understood that travel and transportation expenses incident to the travel would be her responsibility. Ms. Lacey refused to sign the statement and stated that the transfer was for the benefit of the agency. The Medical Officer-in-charge left the issue unresolved and indicated he would check with headquarters on it.

Because the Miami position incumbent's departure was postponed, Ms. Lacey was notified the next day that the July 8, 1974, effective date of transfer was cancelled. However, the Medical Officer-in-charge contacted her again on July 15, 1974, regarding the transfer. At this time, Ms. Lacey talked via telephone to the Director, Division of Federal Employee Health (DFEH), Hyattsville, Maryland, who told her to start driving to Miami on July 17, 1974, so as to

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report for duty on July 22, 1974. Ms. Lacey contends that this constituted verbal approval of the transfer by an authorized official acting within the scope of his authority, which authorized travel and transportation expenses. The Director, DFEH, denies that approval of expenses was ever intended, given or contemplated, however, he does state that he informed Ms. Lacey that the Personnel Action Form (SF-50) covering her reassignment would be forwarded to her in Miami.

On July 16, 1974, the Medical Officer-in-charge contacted Ms. Lacey just prior to her departure for Miami. He states that Ms. Lacey was advised by headquarters that she would not receive travel expenses in connection with her reassignment.

Ms. Lacey reported for duty in Miami on July 22, 1974. A few days later, she telephoned the Executive Officer, DFEH, concerning her travel and transportation expense. The substance of this call as reported by the Executive Officer is as follows:

"On or about July 29, 1974, Miss Lacey called me from Miami, Florida. She told me that she and her 'brother' moved from Chicago to Miami and the Agency he worked for was paying his travel and moving expenses. She wondered why our Division couldn't pay for her expenses. She told me that Dr. Ederma [Director, DFEH] had said that she must pay her own expenses but after finding out that other agencies pay their employees moving and travel expenses she was going to try and get the same.

"I explained to her that Dr. Ederma had informed her that she would not be paid for travel and moving expenses for the following reasons:

- "1. She wanted to be reassigned from Chicago to Miami for her own convenience and not for the convenience of the Government.
- "2. The Division operates its health unit on a reimbursable basis and monies were not included in Miami's budget for moving a nurse from another city.

"3. We recruit locally and at that time we had a nurse who lived in Miami and was interested in the health unit's position."

Apparently Ms. Lacey did not pursue this matter further until June 5, 1975, when she filed a claim with our Claims Division for travel and transportation expenses incident to her assignment.

An employee's entitlement to travel and transportation expenses in connection with a change of official station is governed by paragraph 2-1.3 of the Federal Travel Regulations (FPMR 101-7, May 1973) which provides in part:

"2-1.3. Travel covered. When change of official station or other action described below is authorized or approved by such official or officials as the head of the agency may designate, travel and transportation expenses and applicable allowance as provided herein are payable in the case of (a) transfer of an employee from one official station to another for permanent duty, Provided That: the transfer is in the interest of the Government and is not primarily for the convenience or benefit of the employee or at his request * * *."

The above-quoted regulation precludes the payment of travel and transportation expenses where the change of official station is primarily for the convenience or benefit of the employee or at his request. The record in the present case clearly shows that Ms. Lacey submitted a written request for transfer to Miami, Florida, on March 22, 1974. The record also indicates that she was advised that if such reassignment was approved, she would be responsible for travel and transportation expenses incident to the transfer. With this knowledge, when the transfer was offered on June 4, 1974, she accepted it in writing by memorandum dated June 7, 1974. Nowhere does the record reveal that she cancelled or withdrew her acceptance which she should have done if she was dissatisfied with the conditions of her reassignment. While the record discloses that she attempted to persuade her agency to pay her travel expenses, there is no indication that any authorized official promised that the agency would reimburse her for such expenses. Moreover, her actions in performing the travel without orders and her subsequent call to the Executive Officer,

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DFEH, complaining about her agency's travel policy, indicates that she realized she had no official entitlement to travel and transportation expenses.

Pursuant to the above-quoted travel regulation it is within the discretion of the agency to determine in any given case whether a transfer is in the interest of the Government or for the convenience or benefit of the employee. B-184251, July 30, 1975. If an employee has taken the initiative in obtaining a transfer to a position in another location, an agency usually considers such transfer as being made for the convenience of the employee or at his request, whereas, if the agency recruits or requests an employee to transfer to a different location it will regard such transfer as being in the interest of the Government. Of course, if an agency orders the transfer and the employee has no discretion in the matter, the employee is entitled to reimbursement of moving expenses.

In the instant case the record indicates that Ms. Lacey had been desirous of transferring to Miami, had applied for the transfer, and agreed to transfer without reimbursement of relocation expenses. Under such conditions we cannot disagree with the HEW determination that Ms. Lacey accepted the appointment in the Miami office for personal reasons and that the agency was not required to assume responsibility for the payment of her moving expense.

Accordingly, we must sustain the settlement certificate issued by our Claims Division dated August 29, 1975, that disallowed Ms. Lacey's claim for travel and transportation expenses in the amount of \$950.

R. F. KELLEY

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Comptroller General
of the United States