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Mr. Hordell
Asst. Dir.

DECISION



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

FEB 11 1977

FILE: **D-187825**

DATE:

MATTER OF:

William D. Vogel - Relocation Expenses

DIGEST:

1. Employee of Department of Justice, transferred from Washington, D.C., to Tucson, Arizona, effective February 10, 1975, claims relocation expenses. He may not be paid such expenses since he was informed prior to travel that reimbursement of relocation expenses was disallowed by officials of Department of Justice who determined transfer to be for benefit or convenience of employee.
2. It is within discretionary authority of employing agency to determine whether transfer is in interest of Government or for benefit or convenience of employee for reimbursement of relocation expenses.

This action is in response to a request from William D. Vogel, an employee of the Department of Justice, for reconsideration of Settlement Certificate dated October 14, 1976, issued by our Claims Division, that disallowed Mr. Vogel's claim for relocation expenses incident to a permanent change of station from Washington, D.C., to Tucson, Arizona. Mr. Vogel's claim was disallowed on the basis that it is within the discretion of the employing agency to determine whether a transfer is in the interest of the Government or for the convenience of the employee and because the Department of Justice, exercising that discretion, had determined the transfer to be in the interest of the employee.

According to the record before us, Mr. Vogel worked in several U.S. Attorneys' Offices, as a Special Assistant to the U.S. Attorney in conducting grand jury investigations of alleged fraud in connection with the Department of Housing and Urban Development. One of these districts was the Federal Judicial District of Arizona. Mr. Vogel inquired of William Smitherman, U.S. Attorney for the District, as to the availability of employment as an Assistant U.S. Attorney, within Mr. Smitherman's office. Mr. Vogel was advised that a vacancy was available,

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that his services were desired, and that the hiring of Mr. Vogel would avoid the delay of a full-field FBI investigation, which normally takes 6 to 8 weeks. At that time there was no request for, nor commitment of payment or reimbursement of relocation expenses. Mr. Vogel accepted the offer of a position from Mr. Smitherman with the understanding that he would not be reimbursed for relocation expenses. The record shows further that subsequently there were conversations by Mr. Vogel with officials of the Department of Justice concerning his entitlement to relocation expenses and he was informed by all that he did not possess any special qualifications for the new job, and that he would not receive reimbursement for relocation expenses.

Mr. Vogel states that he never acquiesced in absorbing the relocation expenses, nor did he ever have an understanding that the transfer had been for his convenience. It is his belief that his transfer was in the interest of the Government. On the other hand, it is the Department of Justice's contention that Mr. Vogel's transfer was at his request and not for the benefit of the Department. By Personnel Action dated December 23, 1974, Mr. Vogel was appointed as Assistant U.S. Attorney, Tucson, Arizona. In block 24 of the Personnel Action there is a notation in longhand stating "No moving expenses 1/15/75" with the initials which appear to be GEP, the initials of Glen E. Pommerening, Assistant Attorney General for Administration. It is noted that this notation is dated prior to Mr. Vogel's reporting date to Tucson of February 10, 1975. This would indicate that Mr. Vogel was aware that he would not be reimbursed any moving expenses.

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 (FTR 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 allowances as provided herein are payable in the case of (a) transfer of an employee from one

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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 when the change of official station is not in the interest of the Government but is primarily for the convenience or benefit of the employee. Our Office has previously stated in B-184251, July 30, 1975, that it is within the discretion of the employing 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.

Mr. Vogel's contentions controvert the Department of Justice's administrative report. Thus, a dispute of fact concerning the reimbursement of relocation expenses incurred by Mr. Vogel is present. Since one who asserts a claim has the burden of furnishing substantial evidence to clearly establish liability on the part of the Government, we have consistently accepted the administrative statement of facts in the absence of a preponderance of the evidence to the contrary. B-197060, October 15, 1976; 41 Comp. Gen. 47, 54 (1961); B-178554, April 8, 1974. Also, we have sustained the administrative determination, made by an agency in the course of performing its official functions, in the absence of showing that such determination was arbitrary or capricious. P-166930, July 22, 1969.

Therefore, based upon the record before us, our Office accepts the Department of Justice's determination that Mr. Vogel's transfer was for his convenience and benefit. Accordingly, the action taken by the Claims Division in disallowing Mr. Vogel's claim is sustained.

R. F. KELLER

Deputy Comptroller General
of the United States