

DOCUMENT RESUME

02563 - [A1792820]

[Transfer for Purpose of Retirement]. B-188597. June 17, 1977. 5 pp. + 2 enclosures (2 pp.).

Decision re: James D. Belknap; by Milton Socolar, Acting Comptroller General.

Issue Area: Personnel Management and Compensation: Compensation (305).

Contact: Office of the General Counsel: Civilian Personnel.

Budget Function: General Government: Central Personnel Management (805).

Organization Concerned: Department of the Navy.

Authority: 5 U.S.C. 5724(h). 46 Comp. Gen. 724. 29 Comp. Gen. 255. F.T.R. (FPMR 101-7), para. 2-1.5a(1)(a).

A retired Naval employee requested reconsideration of a decision denying his claim for relocation expenses incurred as an employee of the Department of the Navy incident to a permanent change of station. The employee, who was transferred for the purpose of voluntary retirement immediately after reporting to the new station, may not be reimbursed any amount of relocation expenses, since the purpose of the transfer was for the employee's benefit. (Author/SC)

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Wm. Haubert  
Civ. Pers.



**DECISION**

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

**FILE: B-183597**

**DATE: June 17, 1977**

**MATTER OF: James D. Belknap - Transfer for purpose of retirement**

- DIGEST:**
1. Employee, who was transferred for purpose of voluntary retirement immediately after reporting to new station, may not be reimbursed any amount of relocation expenses since purpose of transfer was for employee's benefit. Rule of 46 Comp. Gen. 724 (1967), that voluntary retirement is separation beyond employee's control, is for application only when employee is transferred in good faith to a location at which he performs necessary and substantial duty prior to voluntary retirement.
  2. The fact that an employee could have been transferred 1 year before his voluntary retirement does not render subsequent transfer for purpose of effecting retirement beneficial to Government. Requirement that transfer not be for benefit or convenience of employee is applicable to the transfer only, and does not look retrospectively to prior periods of employment.

This action concerns an appeal by Mr. James D. Belknap from the denial by our Claims Division of his claim for relocation expenses incurred as an employee of the Department of the Navy incident to a permanent change of station.

The record shows that in February 1973 Mr. Belknap was transferred from Port Hueneme, California, to Pascagoula, Mississippi. The request for personnel action which initiated that transfer indicated that the change of station was a reassignment for 2 years (1973-1974) or until the completion of the LHA shipbuilding project to which Mr. Belknap was being assigned. In a memorandum dated July 26, 1974, the Commander of the Naval Sea Systems Command stated that the LHA project was to be extended for an additional year, through June 1975, and noted that Mr. Belknap expressed an interest in returning to Port Hueneme and retiring upon completion of the 1-year extension. The memorandum further provided:

"The LHA Project Manager hereby certifies that it is in the best interest of the government for Mr. Belknap to remain at SUPSHIP, Pascagoula for an additional year (through June 1975) to manage the LHA data task and then be allowed to return to NSWSES [Naval Ship Weapons Systems Engineering Station] Port Hueneme, California on PCS orders, with the option to retire in July 1975 without the requirement for one additional year of government service. Necessary funds required for the PCS will be made available to NSWSES, Port Hueneme by the LHA Project."

A subsequent memorandum dated March 21, 1975, from the Commander of the Naval Sea Systems Command requested that the Commanding Officer at Port Hueneme establish a position in NSWSES to which Mr. Belknap could be transferred, and to process Mr. Belknap's retirement immediately upon the completion of his permanent change of station travel. The memorandum contains the following explanation for the above action:

"\* \* \* The principle involved upon which the legality of the PCS action is based is that Mr. Belknap could have been returned to NSWSES in July 1974 and completed the one year of service required by the transportation agreement there. Instead, he was asked to remain at Pascagoula another year in order to establish a data bank for use in the Ingalls claim. Although the regulations are explicit in requiring a year of service after completing travel, it is believed that the intent of the regulations has been met because of the special circumstances of Mr. Belknap's case. This belief is further supported by a Comptroller General opinion that retirement is an acceptable reason for releasing employees from the period of service requirement.

"Accordingly, you are requested to establish a position at GS-13, effect a permanent change of station to that position at NSWSES, and process Mr. Belknap's retirement immediately after he finishes travel. Mr. Belknap must execute a request for retirement prior to beginning travel."

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Pursuant to the above memorandum, Mr. Belknap was issued transfer orders dated April 16, 1975, authorizing a permanent change of station from Pascagoula, Mississippi, to Port Hueneme, California. Mr. Belknap reported for duty at Port Hueneme on June 23, 1975, and, 4 days later, voluntarily retired, effective June 27, 1975.

Claiming reimbursement of his relocation expenses, Mr. Belknap submitted a travel voucher dated August 1, 1975, in the amount of \$7,033.32, for residence transactions, temporary quarters subsistence, and transportation and storage of household goods. In addition, Mr. Belknap claimed an unspecified sum for his travel and for transportation of his dependents. Based on estimated costs of \$5,958 he had been previously authorized a travel advance in the amount of \$5,466 which remains outstanding. Also, transportation requests were issued for Mr. Belknap's dependents. Mr. Belknap's entitlement to any portion of this amount was administratively questioned on the grounds that he was not required to sign an employment agreement, that he was authorized to retire upon completion of his permanent change of station travel, and that the new residence was not in the vicinity of Port Hueneme. Accordingly, the matter was forwarded to our Claims Division on February 9, 1976, as a doubtful claim.

By Settlement Certificate Z-2618201, dated November 19, 1976, our Claims Division denied Mr. Belknap's request for reimbursement on the grounds that he failed to agree in writing to remain in the service of the Government for 12 months following the effective date of the transfer, as required by paragraph 2-1.5a(1)(a) of the Federal Travel Regulations (FTR 101-7, May 1973). The record contains a form DD 1705, which is an application for reimbursement of residence transaction expenses, signed by Mr. Belknap on August 1, 1975, in which he states, in response to a question as to the date the transportation agreement was signed, that such agreement was waived. In addition, the record contains a memorandum dated December 18, 1975, from the Civilian Personnel Officer of NSWSES, Port Hueneme, which states that Mr. Belknap was not required to sign an employment agreement. Notwithstanding the above, in appealing the settlement, Mr. Belknap has submitted a transportation agreement purportedly validated by the Civilian Personnel Officer at Port Hueneme, and signed on June 10, 1975. Having now submitted this document, Mr. Belknap contends that he has satisfied all of the requirements necessary to the reimbursement of his relocation expenses. For the reasons stated below, however, Mr. Belknap is not entitled to such

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reimbursement, regardless of whether the transportation agreement was properly executed.

The Department of the Navy justified its action to transfer Mr. Belknap from Pascagoula to Port Hueneme upon our decision in 46 Comp. Gen. 724 (1967). That decision held that although the execution of a transportation agreement by a transferred employee is a condition precedent to the payment of his relocation expenses, the agreement does not bar the voluntary retirement of the employee. We, therefore, held that an employee who reached retirement age approximately 5 months prior to fulfilling the service period may, if he had previously executed a travel agreement, be relieved from refunding the travel expenses he received if the retirement, which was held to be a separation beyond his control, was considered acceptable to the employing agency. However, section 5 of the administrative expense statute of August 2, 1946, now codified in section 5724(h) of title 5, United States Code (1970), provides that when a transfer is made primarily for the convenience or benefit of the employee, or at his request, the employee's relocation expenses may not be paid from Government funds. Based on that authority, we held in 29 Comp. Gen. 255 (1949) that an employee may not be transferred to his former station for the purpose of being retired, notwithstanding that an ultimate return to that duty station was contemplated at the time of the original transfer by both the employing agency and the employee. This rule was in no respect modified or overruled by 46 Comp. Gen. 724, *supra*. Thus, the rule in 46 Comp. Gen. 724 applies only where the employee is transferred in good faith to a location at which he performs necessary and substantial duty prior to his voluntary retirement.

In the present case, the record clearly indicates that the sole purpose of Mr. Belknap's transfer to Port Hueneme was to effect his retirement in California. Indeed, Mr. Belknap was required to execute his retirement request before commencing change of station travel. It has been argued, however, by the Commander of the Naval Sea Systems Command that Mr. Belknap's transfer was for the benefit of the Government because Mr. Belknap could have been transferred to Port Hueneme in July 1974, 1 year prior to his eligibility for voluntary retirement. It is thus contended that it was for the benefit and convenience of the Government that Mr. Belknap was not transferred at that time. The requirement of 5 U.S.C. § 5724(h), that the transfer not be primarily for the benefit or convenience of the employee, is applicable only to the transfer itself, and

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does not look retrospectively to prior periods of employment. Thus, the fact that the Department of the Navy had the benefit of Mr. Balknap's services in Pascagoula, Mississippi, is not material to a consideration of whether his transfer to Port Hueneme was for the Government's benefit. Since that transfer was clearly for the sole purpose of permitting Mr. Balknap to retire in California, the rule in 29 Comp. Gen. 255 applies and no portion of his relocation expenses may be reimbursed.

Accordingly, the denial of Mr. Balknap's claim is affirmed and all monies advanced to him and payments pursuant to transportation requests incident to his transfer from Pascagoula, Mississippi, to Port Hueneme, California, should be recovered.

*Milton J. Auster*

Acting Comptroller General  
of the United States



UNITED STATES GENERAL ACCOUNTING OFFICE  
WASHINGTON, D.C. 20548



CLAIMS DIVISION

PA-7-2618201-342

MAR 10 1977

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The Comptroller General

Herewith is the file relative to the claim of Mr. James D. Belknap for travel and transportation expenses believed due incident to his transfer of official station and ensuing retirement, as an employee of the Department of the Navy.

The record shows that on July 26, 1974, the Naval Sea Systems Command, Department of the Navy, requested that Mr. Belknap be retained at Pascagoula, Mississippi, through June 1975, and then be allowed to return to Port Huenequa, California, under travel orders granting him the option to retire in July 1975, without remaining in Government service for one year as is required in Public Law 89-516. This request was administratively approved by the Commander, Naval Sea Systems Command on October 25, 1974, who waived the one year additional duty requirement, and a GS-13 position was apparently "created" for the employee at Port Huenequa. Following his relocation, the employee voluntarily retired on June 27, 1975, four days after he was to report for duty at Port Huenequa.

Mr. Belknap's claim for reimbursement of relocation expenses was disallowed by the Department of the Navy, on the basis of his not having executed a 12 month service agreement as required by paragraph 2-1.5a(1)(a) of the Federal Travel Regulations. By Settlement Certificate dated November 19, 1976, our Office disallowed Mr. Belknap's claim in accordance with 46 Comp. Gen. 724, 726, which held that payment of relocation expenses is conditioned upon signing the agreement, though not a bar to voluntary retirement whenever the employee is eligible under law. The employee had now submitted a 12 month service agreement, dated June 10, 1975, prior to his transfer, and has again requested payment of relocation expenses.

The record shows that the employee was scheduled to be retired before he was transferred to California. It appears that his transfer there was at his request and for his convenience rather than for the convenience of the Government. Therefore, a question arises as to whether the Department of the Navy acted within its discretionary authority in creating a position

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*Wm. Haidut*  
*in ltr.*

for the employee, effecting his transfer, and waiving his service agreement in order that he may retire. In view of the doubt concerning the propriety of the agency's actions and the amount which is being claimed, the matter is submitted for your consideration and instructions.

*W. J. Gordon*  
Chief, Payment Claims Branch

Enclosure

Indorsement

B-188597-O.H.

June 17, 1977

Director, Claims Division

Returned. Since the record clearly indicates that the transfer was to effect the employee's retirement, we have sustained your denial by our decision of today, B-188597, copy attached, notwithstanding Mr. Balknap's submission of a travel agreement.

*Milton J. Gordon*  
Comptroller General  
of the United States

Attachments