

DECISION

23002

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

FILE: B-210524

DATE: June 6, 1983

MATTER OF: Vivian W. Spencer - Severance Pay

DIGEST:

Where an employee's claim for severance pay by reason of involuntary separation is based upon the contention that her position was moved to another commuting area, the employee must also establish that she was forced to relocate her residence because of that change in commuting areas. We will not question an agency's determination on commuting area or necessity of relocation unless that determination is arbitrary, capricious, or clearly erroneous. Here, claimant could not establish to the satisfaction of the agency that the change would compel the employee to change her residence to continue employment. We cannot say that the agency's determination was arbitrary, capricious, or clearly erroneous. Hence, claimant's resignation was not involuntary, and her claim for severance pay is denied.

Vivian W. Spencer requests reconsideration of Settlement Certificate, Z-2844073, August 20, 1982, issued by our Claims Group, denying her claim for severance pay. For the reasons set forth below, we affirm that action.

Mrs. Spencer was an employee of the Bureau of Mines, Department of the Interior (Department), at its Morgantown, West Virginia facility. In September 1981 that function was transferred to Lake Lynn, Pennsylvania. Mrs. Spencer refused to accompany the transfer and resigned, claiming that her resignation was an involuntary separation because Lake Lynn was outside the Morgantown commuting area. Her claim was predicated upon both 5 U.S.C. § 5595(b) and 5 C.F.R. § 550.705. Under 5 U.S.C. § 5595(b) severance pay is payable to an employee who, "is involuntarily separated from the service, not by removal for cause * * *." The statute is implemented by 5 C.F.R. § 550.705 which provides that:

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"When an employee is separated because he declines to accept assignment to another commuting area, the separation is an involuntary separation [not for cause] * * *".

After an initial denial of her claim, Mrs. Spencer pursued her rights of appeal within the Department. A grievance examiner for the Department's Office of Hearings and Appeals found, in his recommended decision, that Lake Lynn was outside the Morgantown commuting area, but this determination was rejected by the Chief, Pittsburgh/Bruceton Administrative Office of the Bureau of Mines. In his April 26, 1982, final determination, the Department's Director of Personnel did not specifically make any determination as to commuting area, but stated that even if the grievance examiner's finding that there had been a change in commuting area was accepted, there was little evidence to support a finding that Mrs. Spencer was compelled to move in accordance with the transfer. Such a finding is a prerequisite to entitlement to severance pay under 5 C.F.R. § 550.705. Upon appeal to our Claims Group, Mrs. Spencer's claim for severance pay was denied on substantially the same grounds. The matter is now before us on reconsideration.

We held in Marshall S. Hellmann, B-182300, January 16, 1975, affirmed on reconsideration, December 4, 1975, that a determination regarding commuting area was the responsibility of the Civil Service Commission (now the Office of Personnel Management) and the agency concerned, and that a determination that there had been no change in commuting area negated any claim for severance pay by reason of involuntary separation. Further, even if a change in commuting area had occurred, an involuntary separation could be established only on a case-by-case basis when it could be shown that the employee was compelled to move in order to continue employment with the agency. We will not question either of the agency's determinations unless they are shown to be arbitrary, capricious, or clearly erroneous.

In the first Hellmann decision, we set out the factors to be considered in determining whether an employee was compelled to change his residence. Those factors are:

"* * * (1) increased distance from home to the new location, (2) increased time and cost of travel, and (3) availability of transportation. * * *"

Applying the above factors in this case, the distance between the new and old worksites is approximately 17-20 miles, representing an approximate travel time of 30-40 minutes. A major portion of the trip is by a divided four-lane highway, the remainder on a secondary state road. Although Mrs. Spencer contends that the secondary road is inadequate and hazardous, the record indicates that it is typical of secondary roads in the area. However, the central issue, as raised in the grievance examiner's report, concerns the access road from the secondary road to the new worksite. It is described as wide, but rising sharply, unpaved, and, "exceedingly rutted and rocky over its entire length." It is approximately 2.5 miles in length, and requires a travel time of 10 minutes at a maximum speed of 15 miles per hour in order to be negotiated. There are indications that daily travel on this road could cause substantial wear and tear on a normal passenger car, and that the road may become impassable, except to four-wheel drive vehicles, in inclement weather. Management at the new worksite has offered to convey employees up the access road by four-wheel drive vehicle during the winter months. Mrs. Spencer contends that this measure is inadequate.

If it is concluded, hypothetically, that the Lake Lynn facility is beyond the Morgantown commuting area, Mrs. Spencer can only be deemed involuntarily separated if she would have been compelled to move in order to assume her new duties. However, the agency concluded that the facts do not support such a finding. Although we fully accept Mrs. Spencer's contention that she was without effective public transportation and that she would have had to secure private transportation, we cannot find that the difficulties associated with the access road, the travel time of 30-40 minutes, and commuting distance of 17-20 miles, constitute reasons compelling enough to have forced her to relocate. Thus, although Mrs. Spencer's route to the new worksite may have been inconvenient, it was not so inadequate as to justify a finding of a forced relocation and consequent involuntary separation, and we cannot say that the agency's determination that she was not required to relocate was arbitrary, capricious, or clearly erroneous.

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Accordingly, we deny Mrs. Spencer's claim for severance pay upon reconsideration and affirm the August 20, 1982, settlement action of our Claims Group:

for 
Comptroller General
of the United States