

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20541

FILE: B-211572

DATE: August 1, 1983

MATTER OF: Marianne Poarch Meehan - Relocation Expenses - Transfer for Employee's Convenience

DIGEST:

Employee who requested transfer from Philadelphia to Pittsburgh, Pennsylvania, claims relocation expenses on the grounds that her transfer was in the interest of the Government. Although the new position was advertised under a vacancy announcement pursuant to the agency's merit promotion program, the position was at a lower grade than her previous position in Philadelphia, and had no greater promotion potential. Thus, her appointment was an exception to the merit promotion program under applicable regulations. Under these conditions, GAO will not disturb the agency's determination that the employee's transfer was primarily for her own convenience and not in the Government's interest.

The issue in this decision is whether an employee's transfer was in the interest of the Government so that she may be reimbursed for relocation expenses in connection with the change of her permanent duty station. For the reasons stated below, we believe that the employee's transfer must be characterized as being primarily for her own convenience or benefit, and not in the interest of the Government. Therefore, the employee is not entitled to reimbursement for her relocation expenses.

This decision is in response to a letter from Ms. Marianne Poarch Meehan, which was forwarded to our Office by a congressional source on March 9, 1983, requesting reconsideration of a prior determination by our Claims Group, Z-2828539, November 19, 1982. The Claims Group disallowed Ms. Meehan's claim for relocation expenses in connection with her transfer in light of a determination by the employing agency that Ms. Meehan's transfer was not in the Government's interest.

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Ms. Meehan was employed by the Internal Revenue Service (IRS) as a Program Analyst, at grade GS-12, in the agency's Philadelphia Regional Office. In September 1980, Ms. Meehan learned of an open position as an Employee Development Specialist at grades GS 7/9/11, in IRS' Pittsburgh District Office. This position was first advertised on September 9, 1980, in a Career Opportunity Listing which was distributed nationwide by the IRS.

On September 22, 1980, Ms. Meehan applied for this position by submitting an Application for Promotion/Reassignment, Form 4536, and a Personnel Qualifications Statement, Standard Form 171, to the agency's personnel office. Thereafter, on January 13, 1981, Mr. Daniel Seklecki, Chief of the Resources Management Division in the Pittsburgh District, notified Ms. Meehan that she had been selected for the Employee Development Specialist position. Mr. Seklecki also told Ms. Meehan at that time that he had authorized reimbursement of relocation expenses for her transfer to Pittsburgh. Once she learned that relocation expenses had been authorized, Ms. Meehan immediately took steps to expedite her moving preparations. She states in her submission as follows:

"* * * Since I was familiar with the provisions of the Internal Revenue Manual dealing with relocations, I immediately prepared the Twelve Month Service Agreement * * *, an estimate of expenses * * *, and Form 1038 Application and Account for Advance of Funds * * *; these were mailed to the Pittsburgh District on January 14, 1981.

"(5) On January 21, 1981, I received Form 4253 Authorization for Moving Expenses * * * from Pittsburgh and began to incur reimbursable moving expenses (e.g., listed my home with a qualified realtor and made arrangements to meet with a Pittsburgh realtor during an authorized house hunting trip)."

Shortly thereafter, on January 29, 1981, Mr. Seklecki again contacted Ms. Meehan, and informed her that the authorization for her to move to Pittsburgh at Government expense had been canceled, based on a determination made by the Mid-Atlantic Regional Commissioner of the IRS. By a

memorandum dated December 12, 1980, entitled "FY 1981 Travel Management Guidelines," the Regional Commissioner had advised the Mid-Atlantic Region District Directors of new guidelines governing travel management and relocation expenses of employees in the region. Those guidelines, which were stated to be effective immediately upon receipt, included a new requirement that the Regional Commissioner approve all lateral reassignments involving the payment of relocation expenses.

In giving authorization for Ms. Meehan's relocation expenses, Mr. Seklecki failed to follow the above agency guidelines, since he did not seek approval from the Regional Commissioner before he notified Ms. Meehan of her entitlement to such expenses. When the Regional Commissioner later reviewed the case, he determined that the relocation expenses should not have been authorized. Therefore, he called on Mr. Seklecki to cancel the prior unapproved authorization.

As stated above, Ms. Meehan began to incur expenses in connection with her transfer on January 21, 1981, prior to the time when Mr. Seklecki first informed her that she was not in fact entitled to relocation expenses. The record is not clear as to the specific expenses which Ms. Meehan incurred prior to January 29, 1981, when she was notified that reimbursement of relocation expenses was not authorized. However, it appears that the vast majority of Ms. Meehan's expenses were incurred after that date. Despite having been told that she was not entitled to relocation expenses, Ms. Meehan continued to make plans to move, and effected her move to Pittsburgh as planned. She reported for duty at her new station as scheduled on or about February 23, 1981.

The total cost of Ms. Meehan's move was estimated at \$10,907. She has claimed temporary quarters and house-hunting expenses, real estate transactions, transportation of her household goods, travel to the new duty station, and miscellaneous expenses. The agency denied the claim on the grounds that Ms. Meehan's transfer was for her own convenience or benefit and not in the interest of the Government. Ms. Meehan appealed the agency's decision to our Claims Group in early March 1981. Ms. Meehan alleged that she should be reimbursed for her relocation expenses in light of precedents set by our Office in Eugene R. Platt, 59 Comp. Gen. 699 (1980), and 61 Comp. Gen. 156 (1981); and Dante P. Fontanella, B-184251, July 30, 1975.

Our Claims Group disagreed, and denied her request for reimbursement. That office held that the decisions cited by Ms. Meehan were not applicable to her case, since she had transferred from a position with promotion potential to a lower graded position without promotion potential, and was, thus, properly considered as being outside the agency's merit promotion plan. The Claims Group also relied on the agency's prior determination that Ms. Meehan's transfer was not in the Government's interest, since that determination was not found to be arbitrary or capricious.

Ms. Meehan now appeals our Claims Group's disallowance of her claim. In a letter forwarded to our Office by a congressional source, Ms. Meehan asserts that our Claims Group's decision "is based on two blatantly incorrect premises." In particular, Ms. Meehan maintains that, contrary to the facts as stated in the Settlement Certificate, the Employee Development Specialist position that she transferred to, "must also qualify [as having promotion potential] since I have been promoted to Employee Development Officer GS-12, since my transfer." Furthermore, she questions how her agency could be said to have determined that her transfer was not in the Government's interest, since Mr. Seklecki had signed a form authorizing her relocation expenses on January 20, 1981. Finally, Ms. Meehan claims that GAO erred in failing to investigate similar situations in the Pittsburgh District, and to consider such findings as precedent in evaluating her claim.

The payment of travel, transportation, and relocation expenses of transferred Government employees is authorized under 5 U.S.C. §§ 5724 and 5724a (1976) as implemented by the Federal Travel Regulations, FPMR 101-7 (May 1973) (FTR). These regulations provide at paragraph 2-1.3 as follows:

"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 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;
* * *."

Reimbursement of travel and transportation expenses under 5 U.S.C. §§ 5724 and 5724a is, thus, conditioned upon a determination by the head of the agency concerned or his designee that the transfer is in the interest of the Government and is not primarily for the convenience or benefit of the employee. See Eugene R. Platt, 59 Comp. Gen. 699 (1980); Norman C. Girard, B-199943, August 4, 1981; and Dante P. Fontanella, B-184251, July 30, 1975. We have consistently held that such a determination is primarily within the discretion of the employing agency, and should not be overturned unless it is found to be arbitrary, capricious, or clearly erroneous under the facts of the case. Platt, cited above; John J. Hertzke, B-205958, July 13, 1982.

In order to assist agencies in making a determination as to whether a transfer is in the Government's interest, we provided the following guidance in Rosemary Lacey, B-185077, May 27, 1976:

" * * * If an employee has taken the initiative in obtaining a transfer to a position in another location, an agency usually considers such transfers 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."

We have previously allowed the payment of relocation expenses in connection with merit promotion transfers where an agency's own regulations provide that such transfers are in the Government's interest. Stephen R. Szarka, B-188048, November 30, 1977. Furthermore, in Fontanella, cited above, we stated that if the agency recruits or requests an employee to transfer to a different location, it will normally regard such a transfer as being in the interest of the Government. Absent an agency policy to the contrary, we

have held that when an agency issues an announcement of an opening under its merit promotion program, such an action is a recruitment action within the scope of Fontanella, and the employee's relocation expenses therefore must be paid. See Eugene R. Platt, 61 Comp. Gen. 156 (1981) (reconsideration).

In other cases, however, we have denied relocation expenses on the grounds that an employee's transfer was a lateral transfer to a position without greater promotion potential, and was, thus, outside the agency's merit promotion program. In those cases, we sustained the agencies' determinations that the employees' transfers were for their own convenience or benefit. See Hertzke, cited above; Jack C. Stoller, B-144304, September 19, 1979; and Ferdinando D'Alauro, B-173783.192, December 21, 1976.

The Office of Personnel Management (OPM) has promulgated regulations governing the administration of merit promotion programs in Federal agencies. The Federal Personnel Manual specifically provides as follows in Chapter 335, subchapter 1-5c:

"c. Agencies may at their discretion except other actions from their plans. These include, but are not limited to:

* * * * *

"(3) A position change from a position having known promotion potential to a position having no higher potential."

We have been advised that the IRS has established internal regulations approving certain exceptions which may be made in administration of the agency's Servicewide Promotion Plan. Section 0335.222 of the Internal Revenue Manual specifically provides as follows:

"Exceptions

"(1) The following personnel actions may be made as exceptions to the competitive procedures of this Plan:

* * * * *

(b) a position change within the Department of the Treasury or transfer from outside the Department from a position having known promotion potential to a position having no increased promotion potential beyond the last non-temporary position held; * * *."

The Regional Commissioner of IRS' Mid-Atlantic Region provided specific guidance concerning procedures to be followed in lateral reassignments in RC-MA-Memorandum No. 0335-7, Revised, August 7, 1978. That memorandum specifically stated as follows:

"Section 6. Payment of Moving Expenses

".01 In the lateral reassignments, normally when the 'best person' test has been met and the decision has been made to release the employee involved, moving expenses should be paid. However, there may be situations where the gaining office will feel that it would not be in the best interests of the Service to pay for the move. The decision to pay or not to pay will rest with the Head of Office."

As stated above, the authority to pay relocation expenses in connection with lateral assignments was shifted from the head of each office to the Mid-Atlantic Regional Commissioner, effective December 12, 1980.

We believe that the record in this case supports the agency's determination that Ms. Meehan's transfer was for her own benefit and not in the interest of the Government. Ms. Meehan transferred from a grade GS-12 Program Analyst position in Philadelphia to the position of Employee Development Specialist, at grades GS-7/9/11, in Pittsburgh. In her initial correspondence with this Office, Ms. Meehan herself stated that the position she transferred to was established at the grades GS-7/9/11 level. Since Ms. Meehan transferred from the grade GS-12 level to a position which had no direct promotion potential beyond grade GS-11, we believe that the agency properly characterized her transfer as a lateral transfer to a position with no greater promotion potential than her former position.

In accordance with the IRS regulations set forth above, the agency was free to consider Ms. Meehan's transfer as being outside the Servicewide Merit Promotion Plan, and, therefore, to make an independent determination as to whether the transfer was in the Government's interest. On January 29, 1981, the Regional Commissioner made such a determination, under the authority vested in him by the Travel Management Guidelines issued on December 12, 1980. We find no grounds for concluding that this determination was arbitrary, capricious, or clearly erroneous under the facts of this case.

Therefore, we sustain the determination made by the Regional Commissioner, in accord with the internal regulations of the agency, even though the claimant was initially and erroneously advised that she would receive relocation expenses in connection with her transfer. See Julie-Anna T. Tom, B-206011, May 3, 1982. It is a well-settled rule of law that the Government cannot be bound beyond the actual authority conferred upon its agents by statute or by regulation. See Dr. Frank A. Peak, 60 Comp. Gen. 71 (1980); and Reza Fassihi, 54 Comp. Gen. 747 (1975). Additionally, the Government is not estopped from repudiating unauthorized acts taken by one of its officials. Joseph Pradarits, 56 Comp. Gen. 131 (1976). Any payments made on the basis of such erroneous authorizations are recoverable. T. N. Beard, B-187173, October 4, 1976.

As stated above, Ms. Meehan has alleged that some employees of the Pittsburgh IRS office were reimbursed for relocation expenses in similar circumstances. We do not investigate individual complaints; we consider them only in the written record before us. 4 C.F.R. § 31.7 (1983). Additionally, even if other individuals were reimbursed in violation of the regulations, that could not form the basis for an increase in Ms. Meehan's entitlements. In that situation, the proper remedy would be to recoup all improper payments made to the other employees.

Accordingly, we sustain the action of the Claims Group in disallowing Ms. Meehan's claim.

Melton J. Aorlan
for
Comptroller General
of the United States