



Comptroller General
of the United States

Washington, D.C. 20548

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Decision

Matter of: James D. McKenzie

File: B-243610

Date: August 26, 1991

DECISION

The Federal Bureau of Investigation (FBI) asks whether Mr. James D. McKenzie may be reimbursed the moving expenses paid by his private-sector employer after his retirement from the FBI.^{1/} For the following reasons we find that he may not be reimbursed.

Under certain conditions, eligible Senior Executive Service (SES) appointees may have the government pay their moving expenses from their last duty station to the place to which they will reside upon retirement, commonly referred to as "last move home" entitlement. Mr. McKenzie states that he negotiated a compensation plan with his post-government retirement employer that included moving expenses because he was unaware that he may have been eligible for the FBI's last move home program. He further states that after relocating at his new employer's expense, he learned that he might have been eligible for last home move benefits and submitted a claim for the moving costs (\$7,998.01) paid by his employer. The FBI denied the claim on the grounds that Mr. McKenzie did not incur any out-of-pocket expenses and that payment by the FBI would duplicate payment. Mr. McKenzie argues that the FBI was negligent in informing him of his benefits and that, had he been properly informed, he would have negotiated a different compensation package with his new employer.^{2/}

Since 1988, eligible SES members may be relocated at government expense to the place where they will reside after

^{1/} Mr. William E. Burrows, Jr., an authorized certifying officer, submitted the request.

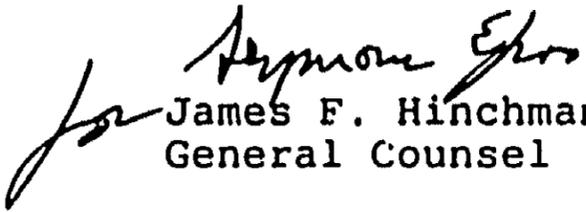
^{2/} Mr. McKenzie also complains that a similarly situated SES member was reimbursed by the FBI for the relocation expenses paid by his post-retirement private-sector employer. We do not have the facts of that case before us; however, that appears contrary to the position stated by the FBI in its submission in Mr. McKenzie's case.

retirement if they transfer in the interest of the government as career appointees in the SES, during or after the 5 years preceding their eligibility for retirement.^{3/} Implementing regulations by the General Services Administration provide that to be eligible for this benefit the appointee must transfer from one SES position to another SES position or from a non-SES position to an SES position. 41 C.F.R. § 302-1.101(a) (1991).^{4/} Thus, under the plain language of the statute and its implementing regulations, to be eligible, the employee must be in an SES position or accepting a new appointment in the SES at the time of the employee's last transfer before retirement. This conclusion is consistent with the statute's legislative history. According to the Senate report, the legislation's purpose is to encourage SES members to accept short-term appointments before their retirements. S. Rep. No. 100-387, 100th Cong., 2d Sess. 115 (1988).

In this case, Mr. McKenzie transferred to Chicago from Virginia in 1986, was appointed to the SES in November 1988, and served in Chicago until his retirement in 1990. Thus, Mr. McKenzie's 1986 transfer to Chicago did not qualify him for last home move benefits because he neither was in an SES position nor transferring to an SES position at the time of his transfer to Chicago.

In addition we agree with the FBI's stated position that the statute and regulations contemplate reimbursing the employee for expenses he actually incurs and not those incurred by a new employer incident to the employee's post retirement employment arrangement. Compare CW4 Carl R. Vertrees, 55 Comp. Gen. 761 (1976), in which we so-held concerning a military retiree's claim for post-retirement travel furnished by his new employer.

Accordingly, the claim may not be authorized for payment.


James F. Hinchman
General Counsel

^{3/} Public Law 100-440, § 629(a), 102 Stat. 1758 (1988), codified at 5 U.S.C. § 5724(a)(3) (1988).

^{4/} This regulation first was published as an interim rule at 54 FR 29716, July 14, 1989, and was published as a final rule at 56 FR 15949, April 15, 1991, effective September 22, 1988, for all eligible SES members who separate from the federal service on or after that date.