



Comptroller General  
of the United States  
Washington, D.C. 20548

# Decision

**Matter of:** Todd Jacobs--Relocation Expenses--Merit  
System Promotion Program

**File:** B-259910

**Date:** March 24, 1995

## DIGEST

An employee applied for and was appointed to a position through his agency's merit promotion program, the vacancy announcement for which expressly stated that no relocation benefits would be provided. However, an announcement made available to non-federal applicants did not include this statement, from which the employee infers that relocation benefits would have been provided to a new appointee, and therefore he should be entitled to them as well. In view of the agency policy not to provide the benefits in cases of this type, and the inclusion of a statement on the merit vacancy announcement that relocation benefits were not being offered, there is no presumption that the employee's transfer, although incident to a merit promotion program, would include relocation benefits. Also, the lack of such a statement on the announcement available to non-federal applicants raises no presumption for a new appointee to the federal government. Accordingly, the denial of the employee's claim for such benefits is sustained.

## DECISION

Mr. Todd Jacobs requests reconsideration of Claims Group settlement Z-2869249, Jan. 12, 1995, denying his claim for reimbursement of relocation expenses he incurred incident to his transfer within the National Oceanic and Atmospheric Administration (NOAA) from a duty station in California to the position of Olympic Coast National Marine Sanctuary Manager, Port Townsend, Washington. We affirm the settlement.

## BACKGROUND

NOAA selected Mr. Jacobs for the Sanctuary Manager's position through its merit promotion selection program. An agency policy gives management the option of not paying relocation benefits when management finds that adequate numbers of well-qualified candidates are available in the commuting area. Such a determination must be

documented and stated on the vacancy announcement.<sup>1</sup> In this case, the agency's merit selection program vacancy announcement, to which Mr. Jacobs responded, stated "NORELO," which is stated by an accompanying guide to notations to mean "Relocation Expenses NOT Authorized."

It appears that Mr. Jacobs was aware of the NORELO provision and questioned its application to him should he accept the position. Unfortunately, Mr. Jacobs's immediate supervisor led him to believe that relocation benefits would be provided incident to his transfer. The agency's report states, however, that the supervisor had no authority to authorize such benefits, and in any event, a Human Resources Advisor investigated the matter and notified Mr. Jacobs, before he accepted the transfer, that relocation benefits would not be paid. Although Mr. Jacobs disputes this latter assertion, stating that he was not notified until 3 days after accepting the position, as the Claims Group noted, even if he had acted on erroneous advice, such advice may not serve as the basis for a claim otherwise barred by law. Bryon A. Hartley, R-252488, June 17, 1993, and cases cited therein.

In his appeal of the Claims Group's settlement, Mr. Jacobs states that a companion vacancy announcement made available to non-federal employee applicants for the same position did not contain the NORELO notation. He infers from this fact that relocation benefits would have been paid to a new appointee and asserts that, therefore, as a transferred employee, he too should be entitled to relocation benefits.

#### OPINION

The full range of relocation benefits is available only to transferring employees and only when the employing agency determines that the transfer is "in the interest of the government" and not primarily for the convenience of the employee. 5 U.S.C. §§ 5724, and 5724a (1988).

In Eugene R. Platt, 61 Comp. Gen. 156 (1981), we held that, in the absence of agency regulations to the contrary, a transfer under an agency merit promotion program generally will be considered in the interest of the United States. Therefore, with respect to merit transfers, there is a presumption that relocation benefits will be provided unless the agency has adopted a contrary policy regarding the payment of relocation benefits incident to a transfer and the determination not to offer such benefits is stated in the job vacancy announcement. Id. As noted above, the agency in this case had in fact adopted such a policy and provided the required notice in the merit promotion vacancy announcement to which Mr. Jacobs responded.

Also, the inference that such benefits would have been provided to a new appointee,

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<sup>1</sup>Department of Commerce Personnel Bulletin 335-2, Section 3, Aug. 5, 1987.

drawn by Mr. Jacobs on the basis of the lack of any statement on the companion vacancy notice that relocation benefits were not available, is incorrect. The benefits available to new appointees to the federal service are substantially more limited than those available to transferees, and are authorized under a separate statute, 5 U.S.C. § 5723. See also Federal Travel Regulation 41 C.F.R. § 302-1.10(d). The agency has discretion whether to offer such benefits to new appointees. There is no requirement that a negative determination regarding relocation expenses be stated on the vacancy announcement and there is no presumption that, absent such a statement, such expenses will be reimbursed.

In this case, the vacancy announcement available to non-federal applicants did not state that relocation benefits would be offered. Also, the agency has informally advised us that none would have been provided if a non-federal employee had been appointed to the position, and as a matter of agency practice, when no benefits are being offered in connection with a vacancy announcement, the distribution of the announcement is limited to the geographic area of the position to be filled.

Although Mr. Jacobs asserts that his selection was "in the interest of the government," the agency report shows that the decision not to provide relocation benefits to fill this vacancy was not based on a review of his personal application, but rather, was based on the agency policy not to pay such expenses when there is an adequate supply of qualified candidates available in the local commuting area. As explained above, an agency has the discretion to make such a determination, and we find no basis in the record before us to question that determination here.

Accordingly, Mr. Jacobs's claim may not be paid.

for  
\s\ Seymour Efros  
Robert P. Murphy  
General Counsel