GAO

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Office of the General Counsel

B-270196

March 22, 1996

Ms. Deborah A. Osipchak
Manager, Financial Services Branch
Federal Aviation Administration
U.S. Department of Transportation
800 Independence Avenue, SW
Washington, DC 20591

Dear Ms. Osipchak:

We refer further to your letter dated October 5, 1995, with enclosures. You seek an opinion regarding the Federal Aviation Administration's (FAA) authority to limit the relocation expense reimbursement eligibility of employees whose selection for a position is contingent upon the availability of permanent change-of-station (PCS) funding.

The facts, as briefly described in a memorandum dated September 21, 1995, from your Manager, Accounting Branch, ASW-42, to the Manager, Financial Review Division, ABA-100, are that employees of the FAA, upon selection for positions involving a permanent change of station, receive an ASW Form 3330-3 "Notice of Selection." If that selection is contingent on the availability of PCS funding, the Notice of Selection contains the following statement:

> "Selection and EOD [Entry on Duty] contingent upon availability of PCS funds; therefore, employee is not to incur PCS expenses until travel order is issued. Expenses incurred prior to date travel order is signed will not be reimbursed by the Government."

The memorandum also states that this Office has ruled that relocation expenses incurred by an employee in anticipation of transfer may be reimbursed when the travel authorization subsequently issued authorizes those expenses based on a previously existing administrative intent to transfer at the time the expenses were incurred. Therefore, the question asked is whether the above-quoted statement on the Notice of Selection is sufficient to preclude reimbursement of any expenses

incurred by a selected employee prior to issuance of a travel order or notification of cancellation of the selection.

We have been advised by FAA officials that FAA has encountered cases where employees who received a Notice of Selection had been orally assured by their supervisors that they could prepare for their transfer, even though their travel authorization had not been issued. As a result, they proceeded to incur relocation expenses in anticipation of that transfer and some of them have sought reimbursement for those expenses even before funding was available and their travel authorization is issued. Others have similarly incurred relocation expenses in anticipation of transfer, but because there was no PCS funding, their selection and transfer had to be cancelled before travel orders were issued.

The authority to reimburse relocation expenses of employees and their dependents who are transferred from one station to another for permanent duty in the interest of the government is contained in 5 U.S.C. §§ 5724 and 5724a (1994), and implementing regulations found in chapter 302 of the Federal Travel Regulation (FTR).[1] Under the provisions of the FTR, administrative authorization or approval of a transfer is a necessary condition to the government assuming the relocation expenses of a transferred employee.[2] Ordinarily, such approval is evidenced by a formal written travel authorization issued with sufficient lead time to allow the employee to prepare for his move before reporting to his/her new duty station[3] and when issued, becomes the primary basis upon which relocation expenses may be reimbursed.[4] However, we have long held that where relocation expenses are incurred prior to and in anticipation of a transfer, the employee may be reimbursed if the expenses were incurred based on a previously existing administrative intention to transfer the employee, clearly evident at the time the expenses were incurred, and the travel authorization subsequently issued authorizes those expenses.[5]

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[1]41 C.F.R. Chapter 302 (1995).

[2]41 C.F.R. § 302-1.3 (1995).

[3]41 C.F.R. §§ 302-1.3(b) and (c) (1995).

[4]54 Comp. Gen. 993 (1975), at 995.

[5]48 Comp. Gen. 395 (1968); 54 Id. 993, supra, footnote 4; James K. Marron, 63 Id. 298 (1984); Joan E. Marci, B-188301, Aug. 16, 1977; George S. McGowan, B-206246, Aug. 29, 1984; and Kirk S. Peters, B-249451, Jan. 7, 1993.

What constitutes notice of an administrative intent to transfer an employee depends on the circumstances in each case.[6] We have held that verbal notice to an employee of his/her tentative selection for a new position qualifies,[7] even where the employee's transfer is contingent on the occurrence of a particular future event, such as higher level approval of an employee selection for a position.[8] Similarly, we have found clear intention to transfer an employee where there was official notice that all essential functions of an installation were to be relocated.[9] Also, where a selected employee sells his or her residence in anticipation of transfer after receiving definite notice of that transfer, and a travel authorization is subsequently issued pursuant to the Notice of Selection, the employee is entitled to be reimbursed for the expenses of selling the residence.[10]

In the situation described in the FAA memorandum, the Notice of Selection states that the employee has been selected for a new position. This clearly establishes an administrative intent to transfer the employee. Consequently, the current statement in the FAA Notice of Selection that "expenses incurred prior to date travel order is signed will not be reimbursed by the Government," goes beyond the problem to be corrected and would not be enforceable in all cases. If a travel authorization is issued in due course, the employee would be entitled to be reimbursed otherwise allowable relocation expenses. On the other hand, if the Notice of Selection is cancelled prior to issuance of a travel authorization, a warning statement in the Notice of Selection would be sufficient to deny the employee reimbursement for expenses incurred prior to cancellation. Therefore, we recommend that the FAA revise the statement in the Notice of Selection. Since only a cancellation of the selection before travel orders are issued would defeat the employee's claim for reimbursement of anticipatory relocation expenses, we suggest that the following language be used:

> "Selection and EOD contingent upon availability of PCS funds; therefore, employee should not incur PCS expenses until travel order is issued. In the event that the selection is cancelled prior to issuance

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[6]48 Comp. Gen. 395 (1968), supra.

[7]Gerald S. Beasley, B-196208, Feb. 28, 1980, and decisions cited.

[8]James H. Hogan, B-191912, Apr. 5, 1979; John J. Fischer, B-188366, Jan. 6, 1978; and Stanley N. Hirsch, B-187045, Aug. 3, 1977.

[9]Kirk S. Peters, B-249451, Jan. 7, 1993, citing to Orville H. Myers, 57 Comp. Gen. 447 (1978). Cf. Joseph C. Hutchinson, B-182013, May 14, 1975, affirmed on reconsideration, Sept. 13, 1976.

[10]Ronald DeFore, B-227663, Oct. 23, 1987, citing 55 Comp. Gen. 613 (1976).

of travel orders, any PCS expenses incurred will not be reimbursed by the Government."

Such a warning, however, would not address the problem of the employee who incurs relocation expenses after receiving definite notice of transfer and then seeks reimbursement for those expenses before travel orders are issued. We note that section 301-11.3(b) of the FTR[11] specifically provides that travel vouchers for temporary duty must be supported by a copy of the travel authorization in order to be reimbursed. While similar language is not contained in chapter 302 of the FTR for relocation travel, section 302-1.3(c) thereof provides that the guidelines in section 301-1.5 of the FTR on issuance of travel authorizations shall be followed, and section 302-1.4(l) of the FTR provides that the effective date of transfer, i.e., reporting for duty,[12] shall be used for relocation expense reimbursement purposes. Therefore, the FAA may wish to issue its own regulation providing that claim vouchers for relocation expenses must be accompanied by a copy of the travel authorization and may not be paid until after the employee reports for duty at his/her new duty station.

Sincerely yours,

Lowell Dodge
Associate General Counsel

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[11]41 C.F.R. § 301-11.3(b) (1995).

[12]41 C.F.R. § 301-1.4(l) (1995).

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Digest

Where a notice of selection for a position involving a transfer is issued contingent upon availability of permanent change-of-station (PCS) funding, the Federal Aviation Administration (FAA) includes a statement in the notice of selection that relocation expenses incurred prior to date travel orders are issued will not be reimbursed. The statement would be sufficient to preclude reimbursement of such expenses when the selection is cancelled prior to issuance of the travel order, but not when a travel order is actually issued. The FAA is advised to amend the statement to provide that, if the selection is cancelled prior to issuance of travel orders, PCS expenses will not be reimbursed.