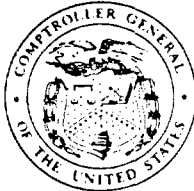


**DECISION**

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

FILE: B-184838

DATE: OCT 29 1975

MATTER OF:

Francis A. Dorn - Severance pay following  
involuntary separation.

DIGEST:

Claimant, who was transferred from Milwaukee to Cleveland by SBA, vigorously pursued administrative appeals and otherwise indicated unwillingness to be transferred to another commuting area, both before and after date of transfer. After his grievance appeals within SBA were exhausted, claimant formally declined the transfer. SBA thereafter removed him for unauthorized absence. Claimant is entitled to severance pay under 5 U.S.C. § 5595 and the Civil Service regulations thereunder, despite fact he had reported for duty at his new post, because actual cause of separation was refusal to accept transfer.

This action is a reconsideration of Settlement Certificate Z-2562436, July 30, 1975, by the Transportation and Claims Division of the United States General Accounting Office, disallowing the claim of Mr. Francis A. Dorn for severance pay.

The record shows that claimant was employed as a Loan Specialist in the Milwaukee Branch Office of the Small Business Administration (SBA). By letter dated March 25, 1974, the Regional Director advised Mr. Dorn that he was being reassigned to the Cleveland District Office, effective April 28, 1974, for the needs of the agency. On April 2, 1974, Mr. Dorn requested that the decision to transfer him be rescinded or postponed, on the grounds that it was arbitrary and punitive in nature and might jeopardize his chances for career advancement, and stated that the transfer would be involuntary on his part. Claimant advised that he would not resist a temporary detail to Cleveland pending his appeal of the transfer. The Regional Director, in a letter dated April 15, 1974, denying his request, stated that the transfer was essential for the efficiency of Region V and the Cleveland District Office. The direction transferring him effective April 28 was again reaffirmed by the Regional Director in a telephone message dated April 26, 1974.

After complying with the transfer order, Mr. Dorn continued to seek rescission of the reassignment through informal and formal grievance procedures, adding personal reasons concerning his family to his

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supporting arguments. He declined to sign an employment agreement, which would have allowed payment of relocation expenses, and did not relocate his household, indicating that he did not consent to the transfer. On May 3, 1974, Mr. Dorn submitted an informal grievance, apparently in accordance with regulations. This was denied on May 20, 1974. On May 21, 1974, claimant filed a formal grievance. On May 30, 1974, the formal grievance was denied. After claimant's appeals within the SBA were exhausted, he informed the Regional Director by letter dated June 24, 1974, that he was formally declining the reassignment and would return to Milwaukee after completing several projects in the Cleveland District Office. He also stated that he expected to be involuntarily separated for failure to accept a new assignment outside his normal commuting area and would claim severance pay on that basis. Beginning July 8, 1974, he failed to report for work in Cleveland.

By letter dated July 17, 1974, the Regional Director informed Mr. Dorn that he was proposing to remove him from his position in the Cleveland District Office because of unauthorized absence. Although Mr. Dorn requested reconsideration of the proposed action, he did not return to the Cleveland District Office, and his removal was effected at close of business on August 30, 1974. The reason for his removal was stated as unauthorized absence.

Prior to claimant's removal, he filed a claim for severance pay with this Office and appealed the removal action to the Civil Service Commission (CSC). In its decision of October 31, 1974, the Chicago Field Office of the CSC's Federal Employee Appeals Authority concluded that Mr. Dorn had in fact been officially transferred to the Cleveland District Office, that he had reported for duty there, and that he had been absent from duty without authorization. The charge of unauthorized absence was sustained and the SDA's removal action was affirmed. On May 2, 1975, the CSC's Appeals Review Board upheld the field office's decision. The Board's decision expressly states that the issue of severance pay is not within its jurisdiction.

Severance pay is authorized by 5 U.S.C. § 5595 which reads in part, as follows:

"(b) Under regulations prescribed by the President or such officer or agency as he may designate, an employee who—

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"(2) is involuntarily separated from the service, not by removal for cause on charges of misconduct, delinquency, or inefficiency;

is entitled to be paid severance pay in regular pay periods by the agency from which separated."

By Executive Order No. 11257, dated November 17, 1965, the President delegated to the CSC the authority to issue regulations implementing the above provision of law. 5 C.F.R. 550.705 (1971) provides that:

"When an employee is separated because he declines to accept assignment to another commuting area, the separation is an involuntary separation not by removal for cause on charges of misconduct, delinquency, or inefficiency for purpose of entitlement to severance pay, unless his position description or other written agreement or understanding provides for these assignments."

Initially we must point out that the responsibility of determining the basis for a separation action and the taking of such action are matters primarily within the jurisdiction of the CSC and the agency concerned. Mr. Dorn contends that when he refused assignment to Cleveland under the provisions of 5 C.F.R. 550.705 his resignation was involuntary not by removal for cause on charges of misconduct, delinquency or inefficiency, and he is entitled to severance pay. The reason for his separation was given by SBA as abandonment of position rather than for failure to accept assignment. It is noted that Mr. Dorn vigorously pursued his avenues of appeal before and during his assignment to the Cleveland Office. It was not until all administrative avenues of appeal had been exhausted that Mr. Dorn refused to accept assignment to the Cleveland Office. Whether an action is voluntary or involuntary is determined not by the form of the action, but by the circumstances that produce it.

On April 2, 1974, shortly after his receipt of his transfer orders, Mr. Dorn advised his office that his transfer would be involuntary and asked postponement of the transfer for 60 days pending review. He also advised that he would not resist a temporary detail to Cleveland. This was denied and he was transferred as originally scheduled. Mr. Dorn did not accept this as a transfer as he never completed his SBA forms 749, "Employment Agreement" or SBA form 785 "Change of Station Approval

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Request and Travel Authorization" which were issued to him pursuant to his pending transfer. These forms authorize reimbursement of an SBA employee for cost of travel and transportation of household goods incident to a change of official station. While completion of these forms is not a prerequisite to transfer, Mr. Dorn's failure to complete them indicates his unwillingness to accept the transfer to Cleveland. From these facts, we do not regard his having reported to Cleveland as being an acceptance of the transfer. The location of the official station of an employee is a matter of fact and not merely one of administrative designation. B-169708, March 2, 1972.

Although claimant may have been properly separated for unauthorized absence, as decided by the SBA and sustained by the Civil Service Commission, we believe that for purposes of entitlement to severance pay he can be said to have been separated because he declined to accept reassignment. 5 C.F.R. 550.705 provides that separation of an employee who declines to accept reassignment to another commuting area is an involuntary separation not by removal for cause for purposes of entitlement to severance pay. This regulatory language applies to Mr. Dorn, even though he was dismissed for another reason.

B-163276, February 13, 1963, cited by our Transportation and Claims Division in support of its denial of Mr. Dorn's claim, does not compel a contrary result. In that case the grievant also claimed severance pay and also asserted that despite having reported to his new duty station he had not reported for work there. However, he had filed no grievance before his transfer and had signed an employment agreement form authorizing reimbursement for household moving expenses and had received an advance of funds to perform the travel. The facts in that case do not indicate, as they do here, a good-faith attempt to utilize administrative appeal procedures before and during the reassignment.

In sum, we interpret the facts here as indicating that Mr. Dorn declined to accept permanent assignment to another commuting area, for purposes of 5 C.F.R. 550.705, supra. Although he was separated for another reason, and although the separation was well-founded on the facts, this should not vitiate his claim to severance pay. Otherwise, Mr. Dorn would be penalized for a good-faith attempt to remain in the employ of his agency while pursuing appeals procedures. It appears that he could reasonably have done nothing more than he did to apprise the SBA of his unwillingness to accept transfer to Cleveland. If we were to hold severance pay inappropriate in this situation because

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Mr. Dorn had been separated for unauthorized absence, then severance pay could be denied to a separated employee merely by postponing an appeals decision until after the effective date of the transfer and separating the employee for unauthorized absence rather than for declining reassignment.

In the present case, we cannot regard the transfer as having been accepted by the claimant because of the reasonable, good-faith appeals protesting that transfer. Since Mr. Dorn stated his intention to leave the Cleveland office of the SBA in a timely fashion after having learned of the denial of his appeals, we conclude that his separation from the SBA should be considered involuntary and not for cause by reason of misconduct, delinquency, or inefficiency under 5 C.F.R. 550.705 (1971), supra.

Accordingly, in view of the foregoing Mr. Dorn is entitled to severance pay and we are advising our Transportation and Claims Division to issue a settlement in his favor in the amount found due.

R.F. KELLER

/ Deputy Comptroller General  
of the United States