The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Larry V. Salas and William D. Morger - Relocation Expenses - Restoration to Duty Following Injury

File: B-222733; B-222959

Date: March 1, 1988

DIGESTS

1. An employee, as the consequence of an on-the-job injury, was separated from federal employment and carried on the rolls of the Office of Workers' Compensation Programs. Upon reemployment 5 U.S.C. § 8151 mandates that he be treated as though he had never left federal employment for the purpose of benefits based on length of service. Where he is reemployed at a different geographical location from his duty station at the date of separation he, therefore, is entitled to relocation expenses under 5 U.S.C. §§ 5724 and 5724a to the same extent as if he had been transferred to the new duty station without a break in service.

2. Where an individual is reemployed at his former duty station following a period of separation during which he was carried on the rolls of the Office of Workers' Compensation Programs, he is not entitled to reimbursement for expenses he incurs in relocating his residence back to that same duty station incident to the reemployment action. The individual's handicap resulting from an on-the-job injury does not justify an exception to the rule that one reappointed to federal employment following a break in service must bear the costs of traveling to his first duty station. These costs are common to all individuals appointed or reappointed to positions at locations distant from their places of residence; therefore, reimbursement for such costs cannot be viewed as ameliorating access-to-work impediments that arise as the result of a handicapping condition. However, because of equitable considerations, a report is being submitted to the Congress recommending that it authorize relocation expenses as a meritorious claim under 31 U.S.C. § 3702(d).

DECISION

This decision deals with the authority of federal agencies to pay relocation expenses incident to the reemployment of

individuals who, following an on-the-job injury, have been carried on the rolls of the Office of Workers' Compensation Programs (OWCP), Department of Labor. In view of the purpose behind 5 U.S.C. § 8151, we hold that such an individual may be paid relocation expenses upon reemployment at a location other than his former duty station to the same extent as if he had been transferred between duty stations without a break in service. An individual who was reemployed at his former duty station, after having moved away from that duty station while being carried on the OWCP rolls, is not entitled to relocation expenses. For equitable reasons, the second individual's case is being referred to the Congress as a meritorious claim.

BACKGROUND

We have been asked by certifying officers for the Departments of Agriculture and Interior to consider relocation expense claims presented by two individuals who have been reemployed by their respective Departments following periods of separation from government service during which each received disability compensation under the authority of 5 U.S.C. §§ 8101 et seq. We have addressed these two cases in a single decision because they present related issues.

Mr. Larry V. Salas was employed by the Forest Service in 1973 when he suffered an on-the-job injury. That injury was permanently disabling and Mr. Salas, thereafter, was unable to perform his duties as a forestry technician. In June 1977, when the Forest Service could no longer find light-duty work for Mr. Salas, his employment with the Department of Agriculture was terminated and Mr. Salas was transferred to the rolls of the OWCP. At the time of separation, his permanent duty station was the Kingston Work Center located in the vicinity of Truth or Consequences, New Mexico. In 1984, 7 years later, the Forest Service offered Mr. Salas a lower grade position in Silver City, New Mexico, under the Handicapped Employment Program. Mr. Salas accepted the position in Silver City, and submitted a claim for the costs he incurred in relocating his residence from Winston, New Mexico, to Silver City. The certifying officer for the Department of Agriculture is in doubt as to the agency's authority to reimburse the relocation expenses claimed.

Mr. William D. Morger was employed by the Bureau of Reclamation at Grand Coulee, Washington, when he suffered an on-the-job injury. His employment with the Department of the Interior was terminated in August 1977 and for the

succeeding 8 years he was carried on the OWCP rolls. Sometime during this 8-year period Mr. Morger relocated his residence to Madera, California. On July 15, 1985, he was reemployed by the Bureau of Reclamation at Grand Coulee, his former duty station. In connection with his reemployment, Mr. Morger was issued a travel order purporting to authorize his transfer of official station from Madera to Grand Coulee. Under those travel orders he has been reimbursed relocation expenses, including travel and transportation of household goods as well as househunting and miscellaneous expenses. The certifying officer for the Department of the Interior has raised a question concerning the authority to reimburse these and other relocation expenses claimed by Mr. Morger.

DISCUSSION

The expenses claimed by Messrs. Salas and Morger are in the nature of those authorized by sections 5724 and 5724a of title 5 of the United States Code for employees transferred in the interest of the government from one official station to another for permanent duty. This Office has held that the reference in section 5724 to a transfer from one official duty station to another requires a change in the permanent duty station of an employee without a break in service. 54 Comp. Gen. 747 (1975); Greg T. Montgomery, B-196292, July 22, 1980. Subsection 5724a(c) creates a limited statutory exception to this particular requirement for individuals who are reemployed at a different geographical location within 1 year following separation through reduction in force or transfer of function.

Essentially, there are three requirements that must be met before an employee is eligible to receive relocation expenses under 5 U.S.C. §§ 5724 and 5724a. The employee must be transferred from one permanent duty station to another; that transfer must be in the interest of the government; and it must be accomplished without a break in service. The records in Mr. Salas' and Mr. Morger's cases amply demonstrate that their reemployment at the particular location was viewed by the employing agency as an action taken in the interest of the government. It is the government's policy to employ those receiving disability compensation to the extent that suitable positions are available. Reemployment relieves the agency involved of the obligation to fund Federal Employees' Compensation payments and results in the productive employment of the individual in a position that serves the agency's needs. In Mr. Salas' case, the reemployment was at a different location and, thus, involved a change of official duty station, although that change of

station was effected following a break in service of nearly 7 years. Mr. Morger was also reemployed following a substantial break in service; however, he was reemployed at his former duty station. His reemployment did not involve a change of official duty station.

We believe there is authority to regard an individual who has been carried on the rolls of the OWCP as transferred without a break in service when he is reemployed at a different geographical location than that which was his official duty station at the date of his separation. As to individuals who resume employment with the federal government after having been carried on the OWCP rolls, 5 U.S.C. § 8151 provides:

> "(a) * * * the entire time during which the employee was receiving compensation under this chapter shall be credited to the employee for the purposes of within-grade step increases, retention purposes, and other rights and benefits based upon length of service."

Although the Office of Personnel Management regulations implementing section 8151 do not specifically address the issue of relocation expenses, they apply that section broadly in terms of the employment benefits it accords the reemployed individual. Federal Personnel Manual, Chapter 353, Subchapter 5-1a(2), provides:

> "(2) Following compensable injury. Persons being restored after recovering from a compensable injury are generally entitled to be treated as though they had never left. The entire period an employee was receiving compensation or continuation of pay is creditable for purposes of rights and benefits based upon length of service, including within-grade increases, career tenure, and completion of the probationary period. However, employees do not earn sick and annual leave while in a nonpay status."

The effect of this regulation is to treat the reemployed individual as though he had never been separated from federal service and to accord him those rights and benefits, other than leave, that would accrue to an individual who did not have a break in service. In view of the broad remedial purpose behind 5 U.S.C. § 8151, we believe it is proper to apply this regulation for the purpose of preserving a reemployed individual's entitlement to the relocation expenses he would have received if he had been

transferred without a break in service to the location at which he was reemployed. In Mr. Salas' case, he was reemployed at a different location than his duty station at the time of separation and he is, therefore, entitled to relocation expenses under 5 U.S.C. §§ 5724 and 5724a to the same extent as if he had been transferred without a break in service from the Kingston Work Center to Silver City. Since Mr. Morger was reemployed at the same location as that from which he had been separated 8 years earlier, however, 5 U.S.C. § 8151 does not have the effect of granting him the expenses that accrue to individuals transferred between duty stations.

The basic authorities to pay relocation expenses of federal employees are contained in chapter 57, title 5, of the United States Code. In addition to the transfer expense authorities discussed above, there is authority to pay a more limited range of expenses to individuals who are appointed to positions outside the continental United States and to individuals appointed to shortage-category positions. 5 U.S.C. §§ 5722 and 5723. None of these statutes provides authority to pay the relocation expenses of an individual who is appointed to a position in the United States that is not a manpower-shortage category position or to an individual who is restored to a position at his former duty station, either with or without a break in service. We find no provision in the Workers' Compensation Act, 5 U.S.C. §§ 8101 et seq. or the regulations issued thereunder which specifically authorizes relocation expenses in a case, such as Mr. Morger's, where an individual who has been on the OWCP rolls is reemployed at his former duty station.

We are cognizant of the fact that many individuals who are reemployed following a disability have been permanently handicapped by that disability. For this reason, it is appropriate to consider whether this fact provides a basis to pay relocation expenses incident to the reappointment of a handicapped employee at his former duty station.

In early decisions, this Office concluded that illness or physical disability provided no basis for increasing the cost of transportation or travel expenses to be paid by the government. See, e.g., 27 Comp. Gen. 52 (1947). More recently, however, we have made exceptions for the benefit of the handicapped. In 56 Comp. Gen. 398 (1977) and 55 Comp. Gen. 800 (1976) we authorized reimbursement of travel expenses for an attendant to accompany a handicapped employee performing official travel. In 56 Comp. Gen 398 (1977) we authorized the use of appropriated funds to

reimburse a handicapped employee for the cost of a motorized wheelchair where the agency had violated the Architectural Barriers Act by installing carpeting in the employee's workplace that made a nonpowered wheelchair unusable. In each of these cases, the expenditure was directed at ameliorating an impediment to the employee's performance of his duties.

In 63 Comp. Gen. 270 (1984) we were asked to consider whether agencies may expend appropriated funds for commercial parking for the severely disabled where government parking facilities are unavailable. In that decision, we drew a distinction between those expenditures that confer a benefit which is primarily economic and those that ameliorate access-to-work impediments that arise from a severely disabled condition. Noting that ordinarily it is a federal employee's responsibility to furnish transportation to and from his place of employment, we held that an agency's appropriated funds may be used to reimburse a severely handicapped employee only to the extent he or she must, by reason of that disability, pay parking costs more than a de minimus amount above the costs paid by nonhandicapped employees for parking. This decision permits reimbursement for a portion of a severely handicapped individual's parking costs where, because of that handicap, he must incur higher costs to park near his place of work, while other employees are able to park at a lower cost some distance from the workplace.

Just as the cost of daily commuting to and from the workplace is to be borne by the employee, the general rule is that an employee must bear the expense of travel to his initial permanent duty station in the absence of a statute to the contrary. Cecil M. Halcomb, 58 Comp. Gen. 744 (1979); 53 Comp. Gen. 313 (1973). In the absence of authority such as 5 U.S.C. § 5724a(c), discussed above, this general rule applies to an individual who is reemployed by the government to the same extent that it applies to an individual appointed to his first position with the federal government. Wallace E. Boulton, B-192817, Dec. 18, 1978. The costs Mr. Morger incurred in relocating his residence back to his former duty station at Grand Coulee Dam, Washington, are no different than any employee who resided elsewhere would incur if he were employed or reemployed at that same location.

These are not costs that remove an access-to-work impediment. They are costs that must be borne by an employee who, like Mr. Morger, has chosen to locate his residence away from his former duty station during a

period of separation from the government service. We know of no authority to reimburse costs of this nature which are occasioned by the employee's decision to relocate his residence away from his duty station while being carried on the rolls of OWCP. Unlike in Mr. Salas' case, discussed above, 5 U.S.C. § 8151 is unhelpful since its effect is merely to treat Mr. Morger as having been restored without a break in service to his former post of duty, an event that carries with it no statutory entitlement to relocation expenses.

In accordance with the above, Mr. Salas may be reimbursed relocation expenses authorized under 5 U.S.C. §§ 5724 and 5724a on the basis of a permanent change of station between the Kingston Work Center and Silver City, New Mexico. Although there is no legal authority to allow Mr. Morger's moving expenses, we are submitting this case to the Congress as a meritorious claim under 31 U.S.C. § 3702(d). In our submission we are recommending that the Congress authorize normal relocation expenses as though Mr. Morger had been an employee transferred in the interest of the government. For the benefit of the government, Mr. Morger was induced to move from Madera to Grand Coulee by the offer of relocation expenses. He accepted the position at Grand Coulee, thereby reducing or eliminating the agency's payments of Federal Employees' Compensation to him based on his disability and has performed valuable services for the Bureau of Reclamation. Based upon these equitable considerations, we recommend that the Congress favorably consider this meritorious claim. Collection action against Mr. Morger should be suspended pending congressional consideration of our request.

Milton J. Socolar

for Comptroller General
of the United States