United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

April 1, 1985

FINANCIAL ADMINISTRATION MEMORANDUM NO. 85-30 (II.G.1.)

To: Bureau Assistant Directors, Administration
Director, Office of Administrative Services
Bureau Finance Officers
Chief, Division of Fiscal Services

From: Chief, Division of Financial Administration
Office of Financial Management

Subject: Obligation of Permanent Change of Station Travel Orders

Attached is a copy of Comptroller General of the United States Decision B-213530, dated November 2, 1984, which overruled previous decisions on the appropriation to be charged for permanent change of station costs. The Decision requires the appropriation current on the day the order is issued be charged with the expenses.

Obligations are to be based on the date of the travel authorization and not the date of transfer. The Decision overrules 35 CG 183 (1955) which was the basis for paragraph 25.1 of Office of Management and Budget (OMB) Circular No. A-34, as revised. Thus, OMB Circular No. A-34 will no longer be followed.

Travel authorizations issued prior to October 1, 1984 (FY 1985) will continue to be obligated under the previous procedures (i.e., expenses are to be charged to the fiscal year in which incurred) and travel authorizations issued after October 1, 1984 will be obligated in full against the fiscal year current on the date the order is issued. The reporting date or effective date of transfer will not be considered in determining the fiscal year to which the expenses are to be charged.

Please direct any questions you may have on this issuance to Mr. Lesley Oden of this Division on 343-5223.

Lee Hiller
Lee Hiller

Attachment

Prior Financial Administration
Memorandum on this Subject:
No. 85-9 (II.G.1.), January 22, 1985
Active

DECISION

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

FILE: B-213530 DATE: November 2, 1984

MATTER OF: Recording of Obligations for Employee Transfer Costs

DIGEST: Reimbursable expenses of an employee transferred in the interest of the Government must be charged against the appropriation current when valid travel orders are issued. B-122358, August 4, 1976 and 35 Comp. Gen. 183 (1955) and other cases inconsistent with this decision overruled.

An authorized official of the Department of Transportation requests that we reconsider our precedents holding that reimbursable expenses of employees transferred in the interest of the Government must be obligated against the appropriation current when the employee incurs the expense. The official asks that the rule be changed so that the obligation may be recorded against the appropriation current when the employee is ordered to make the move. As will be explained below, we conclude that these expenses should be recorded against the appropriation current when valid travel orders are issued.

BACKGROUND

Federal agencies, such as the Federal Aviation Administration (FAA) of the Department of Transportation, often must transfer employees for the benefit of the Government. Generally, the transferred employees are entitled to receive reimbursement of their travel and transportation expenses as well as relocation expenses. See 5 U.S.C. §§ 5724 and 5724a. Often, employees do not incur all reimbursable transfer expenses in the fiscal year in which they are transferred. For example, employees have up to 3 years to sell their residence at the duty station from which transferred and still be entitled to be reimbursed residence transaction expenses of up to $15,000. See Federal Travel Regulations, para. 2-6.1e (Supp. 4, August 23, 1982), incorp. by ref., 41 C.F.R. § 101-7.003.

The uncertainty of when a transferred employee will incur a reimbursable expense creates problems for the employing agency. The agency must set aside sufficient funds in a fiscal year to reimburse employees for the maximum relocation expenses they may incur in that year. This is done by tentatively recording an obligation against the current fiscal year funds. That is, for each transferred employee, an agency

reserves sufficient funds to reimburse the employee for the maximum estimated expenses of relocating. By the end of the fiscal year, the agency adjusts the amounts tentatively recorded as obligations so as to reflect the actual expenses incurred by the transferred employee during that fiscal year. The problem is that the amount of tentatively obligated funds in excess of the expenses actually incurred must be deobligated and is lost to the agency, since the fiscal year is over and these funds may not be carried over into the next fiscal year. For agencies that transfer many employees, the amount of funds that may be lost in this way can be substantial.

Furthermore, with the start of the new fiscal year, the agency must again tentatively obligate sufficient funds to reimburse the transferred employees for the potential maximum relocation expenses they may incur in the new fiscal year. Thus, for example, upon receipt of its funds for fiscal year 1982, the Southwest Region of the FAA tentatively obligated $546,500 for reimbursement of relocation expenses authorized but not incurred prior to fiscal year 1982.

The present system, as explained above, is set out in para. 25.1 of Office of Management and Budget (OMB) Circular No. A-34, as revised. When the FAA requested that OMB revise the Circular, the OMB representative explained that the Circular was based on GAO decisions and that any revision would require GAO to reconsider its previous rulings. The FAA therefore has made this request that we overrule our precedent and rule "that costs for PCS [permanent change of station] moves be obligated against the specific appropriation current at the time the employee is ordered to move and paid from that appropriation regardless of when the individual events of the move occur."

DISCUSSION

The OMB Circular No. A-34 accurately reflects the rulings we have made in this area. We have held that only when a transferred employee actually incurs expenses is there a binding obligation. B-122358, August 4, 1976; 28 Comp. Gen. 337, 338 (1948). This holding was based on the rule that the issuance of travel orders pursuant to an employee's transfer does not constitute a contractual obligation but is merely authorization for the employee to incur the expense. We therefore reasoned that until the employee incurred the expense the Government was not obligated to reimburse. 35 Comp. Gen. 183, 185 (1955). Consequently, we determined that to permit the charging of travel and transportation

expenses to the appropriation current at the time the relocation was ordered would violate the language of 31 U.S.C. § 1502a, "the so-called bona fide need rule," which states that an appropriation limited in time for obligation is available only to pay "expenses properly incurred during the period of availability or to complete contracts properly made within that period of availability." See 27 Comp. Gen. 25, 27 (1947). See also 31 Comp. Gen. 471, 472 (1952).

We have carefully reviewed our earlier cases and have concluded that they were wrong. It is now our view that an agency should charge the full amount of the reimbursable expenses against the appropriation current when the employee is issued travel orders. As explained in more detail below, this position results from our recognition that the Government has incurred an obligation to pay relocation expenses at the time it transfers an employee.

The reasoning in our earlier decisions, that there was no obligation until the employee actually incurred reimbursable expenses, overlooked the fact that the relocation statutes and the implementing regulations create an obligation on the part of the Government to reimburse, within limits, whatever expenses the transferred employee incurs. For example, we have ruled that certain relocation benefits, such as reimbursement of allowable real estate expenses, are mandatory in nature and that an agency's attempt to deny approval of these expenses is ineffective. See 55 Comp. Gen. 613 (1976); B-161583, June 15, 1967. Thus, the Government's obligation is established when the employee is transferred. In this regard, upon the transfer of an employee in the interest of the Government, we have allowed reimbursement of residence transaction expenses even in the absence of the agency's prior authorization for the employee to incur these expenses. 55 Comp. Gen. 613; B-166681, July 9, 1969.

We recognize that until an employee actually incurs the relocation expenses the Government is not required to reimburse them. This, however, does not change our conclusion that the obligation to reimburse these expenses arises at the time the employee is ordered to relocate. In our opinion, regardless of when the expenses are actually incurred, the transfer of the employee is a bona fide need of the year in which he is ordered to transfer and the expenses must be charged against funds current in that year.

What constitutes a bona fide need of a particular fiscal year depends largely on the facts and circumstances of a particular case and there is no general rule applicable to all situations. 44 Comp. Gen. 395, 401 (1965). In this case it

is clear that the need for the relocation of the employee and the resulting benefits and entitlements arises when the employee is ordered to be transferred, even though for a number of reasons beyond the agency's and employee's control certain relocation expenses may not be incurred until a fiscal year subsequent to the transfer. Accordingly, we conclude that there is a bona fide need for the relocation expenses in the fiscal year in which the employee is transferred.

We must address two other issues. The first is the statutory requirement that an amount may only be recorded as an obligation if there is documentary evidence of the expenses of travel under law. 31 U.S.C. § 1501(a)(7). In view of the mandatory nature of relocation expenses, we deem this statutory test to be met upon the issuance of valid travel orders to the transferred employee.

The second matter concerns the amount to be obligated. This presents no problem since this amount would not differ from the amount that agencies have been recording tentatively as obligations under the existing system, the estimated total costs of the relocation. See 35 Comp. Gen. at 185; OMB Circular No. A-34, para. 25.1. This method of obligation means that the amount recorded as obligated may not be the exact amount that is eventually spent; however, this is not unusual. Of course, agencies must obligate sufficient funds and, therefore, agencies should realistically estimate the probable reimbursement that may accrue to the transferred employee.[1/]

In overruling our previous decisions in this area, of which the leading ones are 35 Comp. Gen. 183 and B-122358, August 4, 1976, we have considered the possibility that the current procedure may result in agencies inadvertently violating the so-called Antideficiency Act. 31 U.S.C. § 1341(a)(1)(B). Under the law an officer or employee of the United States may not commit the United States to make any payment in advance of an appropriation. The potential for violation exists because upon the transfer of the employee the agency commits itself to pay certain expenses, such as residence transaction expenses. These expenses, however, may not be paid for 2 or 3 years out of an appropriation not in existence when the agency committed itself to pay. This is, in effect, committing the Government to pay for an obligation

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1/ To ascertain these amounts, agencies should rely on past experience and refer to FTR, ch. 2 (Supp. 1, September 28, 1981, as amended).

or liability out of a future appropriation. Cf. 42 Comp. Gen. 272, 277 (1962). Indeed, it is theoretically conceivable that there will be no funds available when the expense is incurred, and yet we have deemed the reimbursement of the expense mandatory. Thus, by overruling our precedents and holding that the obligation is to be recorded against the appropriation current when the travel orders are issued, we eliminate the possibility of an Antideficiency Act violation.

Accordingly, we rule that for all travel and transportation expenses of a transferred employee, an agency should record the obligation against the appropriation current when the employee is issued travel orders. To the extent that prior cases are inconsistent with this ruling, those cases are overruled.

for Milton J. Socolar

Comptroller General
of the United States