Board of Contract Appeals
General Services Administration
Washington, D.C. 20405

June 1, 2001

GSBCA 15532-RELO

In the Matter of JAMES W. RESPESS

James W. Respess, Leesburg, GA, Claimant.

Deborah Osipchak, Manager, Travel and Payroll Services Branch, Federal Aviation Administration, Washington, DC, appearing for Department of Transportation.

DANIELS, Board Judge (Chairman).

The Federal Aviation Administration (FAA), a bureau of the Department of Transportation, asks us for a decision pursuant to 31 U.S.C. § 3529 (Supp. V 1999) regarding an employee's entitlement to permanent change of station benefits.

The employee, James W. Respess, served for several years as an electronics technician in the FAA's Southern Region. His official duty station was College Park, Georgia, an Atlanta suburb, but he rarely reported there. Instead, he traveled approximately ninety-five percent of the time. His family lived in Leesburg, Georgia, about 180 miles south of Atlanta.

In 2000, Mr. Respess applied for a position as an airway transportation system specialist at an FAA facility in Peachtree City, Georgia, about twenty miles south of College Park. The position announcement stated, "PCS [permanent change of station]: Relocation/moving expenses will be paid per applicable regulations." Mr. Respess was selected for the position. He began work in Peachtree City on January 29, 2001.

Mr. Respess maintains that because the transfer requires him to commute about 160 miles each way from his residence to his new duty station, he should be entitled to receive benefits associated with a permanent change of station. An FAA official has reviewed decisions of the Comptroller General, our predecessor in settling claims involving relocation expenses incurred by federal employees. She recognizes that the Comptroller General held that "when an employee who is in a travel status more than 90 percent of the time is transferred, he may be reimbursed for the real estate expenses incurred in selling his former residence . . . even though the home was not located at the place that was administratively designated as his duty station and he did not commute daily from that residence." Billy L.

Kenney, B-188706 (Dec. 14, 1978). She is concerned, however, that "this decision is only in reference to real estate transactions, not criteria for a permanent change of station move."

The FAA is not governed by the travel statutes and regulations that apply to Government agencies generally. Congress has provided that in place of those laws and most others regarding federal personnel management, "the Administrator of the [FAA] shall develop and implement . . . a personnel management system for the [FAA] that addresses the unique demands on the agency's workforce." Pub. L. No. 104-50, § 347, 109 Stat. 436, 460 (1995). To implement this requirement, the FAA Administrator has issued the Federal Aviation Administration Travel Policy (FAATP). See FAATP §§ 300-1.11, -2.4 (Jan. 1, 1999). We review this claim against the standards enunciated in that Policy. See Kathryn M. Vernon, GSBCA 14622-RELO, 98-2 BCA ¶ 29,973 (regarding earlier version of policy).

The first goal of the FAATP is "[t]o provide equitable reimbursement to employees for additional expenses incurred while performing official travel or while relocating at Government expense." FAATP 300-1.3. An employee's relocation is to be at Government expense when four specified circumstances are present. These are that the FAA has determined that the transfer is in the interest of the Government; the employee meets FAATP distance requirements; the employee meets FAATP timing requirements; and the employee signs a service agreement as required by the FAATP. Id. 302-3.4; see also id. 302-2.2.

There is no question that Mr. Respess meets three of the four prerequisites for entitlement to relocation at Government expense. For example, as to the first one, the FAA stated in the vacancy announcement for the employee's merit promotion position that relocation benefits would be paid to the extent permissible under the FAATP, and that is a conclusive determination that the agency considered the transfer to be in the interest of the Government. See FAATP 302-2.3.

Whether the employee met the FAATP's distance requirements is the sole issue here. These requirements are described in FAATP 302-3.20 through -3.23. Under these provisions, relocation expenses will not be authorized in two circumstances: where the distance between the employee's old and new official stations is less than ten miles, and where the employee's commute from his old residence to his new official station is less than the commute from his old residence to his old official station. FAATP 302-3.20, -3.23. Relocation expenses will be authorized where the distance between the employee's old and new official stations is ten miles or more but less than one hundred miles, but only if the employee's relocation is incident to his change of official station.[1] Id. 302-3.21, -3.22. The

[1]Two other conditions must also be met if the distance is ten miles or more but less than fifty miles: the FAA must have directed the employee to move involuntarily from his old official station to his new official station -- for example, due to relocation or closure of a facility, consolidation of functions, or reorganization; and the employee's "Associate/Assistant Administrator or the Chief Counsel [must have] authorize[d] an exception to this rule on an individual case basis." FAATP 302-3.21. Although the provision as written requires that all three conditions be met as a prerequisite for the authorization of payment of relocation expenses, we question whether the agency might have (continued...)

term "official station" means "the building or office from where the officer or employee regularly reports for duty." Id. 302-1.11. A "relocation is considered to be 'incident to a change of official station' when requiring [the employee] to commute from [his] old residence would cause an undue burden on [him]." Id. 302-3.24. Whether an undue burden exists is dependent on changes in commuting time and distance. Id.

None of the FAATP rules regarding distance requirements are fundamentally dissimilar from the rules promulgated for agencies generally by the Administrator of General Services in the Federal Travel Regulation (FTR). We consequently see no reason to treat Mr. Respess' situation differently from the way in which we would treat it if he were employed by an agency governed by the FTR. The Comptroller General's ruling in Kenney -- and other cases -- is a sensible one: Where an employee travels almost constantly in the course of his work, and does not regularly report to duty at a particular station, his residence, rather than his designated "official station," should be viewed as his place of work when considering entitlement to relocation benefits. Because the employee essentially worked from his home, rather than the designated office (to the extent that he had any fixed place of employment at all), determining benefits on the basis that the employee worked from the office would be inconsistent with the fundamental goal of the FAATP (and the FTR) "[t]o provide equitable reimbursement to employees for additional expenses incurred . . . while relocating at Government expense." See Rowan L. Peterson, B-260322 (Aug. 15, 1995); Don E. Hansen, B-254090 (Mar. 30, 1994); John W. Pitts, B-215012 (Dec. 4, 1984); Robert A. Van Winkle, B-184004 (Apr. 27, 1976); Edith Albrittain, B-167708 (Sept. 26, 1969).

In effect, by transferring Mr. Respess from one job to another, the FAA moved the locus of his activities from his home in Leesburg, Georgia, to an office in Peachtree City, Georgia -- a distance of about 160 miles. A commute of 160 miles each way, to and from work, on a regular basis would clearly be an undue burden on an employee. Any move Mr. Respess might make which would result in his living within normal commuting distance of Peachtree City would be incident to the transfer.[2]

We note that under the FAATP, if an employee relocates at Government expense, the FAA must pay certain benefits to him and may pay others. FAATP 302-3.101, -3.102. The FAATP does not suggest that an employee who is eligible for reimbursement of real estate

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intended that fulfillment of only one or two of the conditions be sufficient for authorization to occur. The phrasing of the third condition -- the granting of an exception to a rule -- appears to indicate a desire to allow benefits to be paid even if other conditions are not met. The FAA may wish to clarify this provision. Whether it does or not, however, has no bearing on this case, since our resolution is made without reference to FAATP 302-3.21.

[2]In making this statement, we assume that Mr. Respess' position in Peachtree City requires him to report to his designated duty station on a regular basis. If the employee's new position, like his old one, requires him to travel almost continuously, our conclusion would be otherwise -- any relocation he might make would not be incident to his transfer, since there would be no more reason for him to live near the new designated station than there was for him to live near the old one.

transaction expenses (a mandatory benefit) is not eligible for receipt of any of the other benefits. The rationale of the cited Comptroller General decisions, which we adopt, compels the contrary conclusion that Mr. Respess is entitled to not only all the benefits payable to an FAA employee who relocates at Government expense, but also whatever additional benefits listed in FAATP 302-3.102 that the agency chooses to pay him.

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STEPHEN M. DANIELS
Board Judge