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

August 5, 1981

In Reply
Refer to: B-203922(DDM)

The Honorable Walter D. Huddleston
United States Senate

Dear Senator Huddleston:

Reference is made to your letter of June 23, 1981, inquiring into the correctness of a decision by the United States Department of Labor disallowing relocation expenses for Roy A. Redmond, Jr. You also requested us to determine whether Mr. Redmond has any other legal or administrative remedy if the Department of Labor's decision on disallowance is correct.

The facts as presented indicate that Mr. Redmond entered into an employment agreement with the Department of Labor under which he was transferred from the Postal Service to the Office of the Inspector General, Department of Labor. The agreement specified that travel and transfer expenses would be paid by the Department of Labor. However, by a memorandum, dated May 22, 1981, the Department's Office of Accounting informed Mr. Redmond that these expenses should not have been paid and that the Department is reclaiming the amount of \$6,025.79 paid to him.

The Department of Labor's decision is correct. In our decision in Postal Service Employees, 58 Comp. Gen. 132 (1978), we held that an employee who transfers from the Postal Service to an agency is not eligible for reimbursement of relocation expenses under 5 U.S.C. §§ 5724 and 5724a (1976). That decision involved our first construction of 5 U.S.C. § 104 (1976), as amended by the Postal Reorganization Act of 1970, Pub. L. No. 91-375, § 6(c)(2), 84 Stat 775. The Act amended 5 U.S.C. § 104 so as to exclude the Postal Service from the term "Executive agency" as defined in 5 U.S.C. § 105 (1976). As a result, employees who transfer from the Postal Service to Federal agencies are not entitled to relocation expenses. James A. Schultz, 59 Comp. Gen. 28, 29 (1979), copy enclosed. Therefore, Mr. Redmond is not entitled to relocation expenses.

[Review of Decision Concerning Claim for Relocation Expense]

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With regard to your inquiry as to any other administrative or legal remedy that might be available to Mr. Redmond, we are not aware of any such remedy for the reasons stated below.

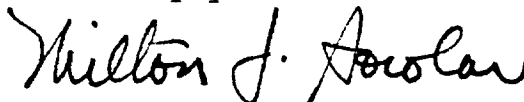
Certain claims of the United States involving erroneous payments may be waived under the provisions of 5 U.S.C. § 5584 (1976). However, this section specifically excludes travel and transportation expenses and allowances and relocation expenses. Mr. Redmond's expenses are of this type. Therefore, waiver is precluded.

The head of an agency is authorized to compromise a claim of the United States or to terminate or suspend collection under certain prescribed conditions. 31 U.S.C. § 952(b)(1976); 4 C.F.R. Parts 103 and 104 (1980). However, where there is a present or prospective ability to pay on the debt, such as Mr. Redmond's continued employment, collection must be attempted. Robert F. Granico, B-189701, September 23, 1977. See 4 C.F.R. § 102.3 (1980).

The United States Court of Claims and the United States District Courts have jurisdiction to consider certain claims against the Government if suit is filed within 6 years after the claim first accrues. See 28 U.S.C. §§ 1346(a)(2), 1491, 2401(a) and 2501 (1976 and Supp. 1981). It is a well-settled rule of law, however, that the Government cannot be bound beyond the actual authority conferred upon its agents by statute or regulations and this is so even though the agent may have been unaware of the limitations on his authority. Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380, 384 (1947); M. Riza Fassihi, 54 Comp. Gen. 747, 749 (1975). In this case, the agent issuing the employment agreement was without authority to provide for relocation expenses for Mr. Redmond. Therefore, an action in the courts is not likely to result in a judgement favorable to Mr. Redmond.

We trust the above answers your inquiry.

Sincerely yours,



Acting Comptroller General
of the United States

Enclosure