

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Departmental Grant Appeals Board

In the Case of:)	
)	
Department of Health)	DATE: June 6, 1988
and Human Services,)	
)	Docket No. D-1
- v. -)	
)	DECISION CR 13
Gerald M. Anderson,)	
Respondent.)	

DECISION AND ORDER

This Debt Collection Act case was heard pursuant to a request for a hearing filed by the Respondent wherein he denied allegations made by the Department of Health and Human Services (DHHS) that he was indebted to the Social Security Administration (SSA, a part of DHHS) for relocation expenses paid on his behalf by SSA in the amount of \$24,093.75. DHHS notified the Respondent that SSA had made a determination that all relocation expenses paid to a government relocation services contractor, Homequity, on behalf of the Respondent must be repaid; DHHS alleged that the applicable Federal Travel Regulations barred payment of expenses for the relocation from one house in Olympia, Washington to a second house in Olympia. After considering the entire record, I hereby conclude that DHHS established that SSA's determination was correct, that the debt claimed by SSA is valid, that neither waiver nor offset is available in this case, and that the Respondent must repay the \$24,093.75 expended by SSA to relocate him.

BACKGROUND STATEMENT

On February 4, 1988, DHHS issued a letter (Notice) informing Gerald M. Anderson (the Respondent) that he was indebted to SSA in the amount of \$24,093.75 and that DHHS intended to collect the debt according to the provisions of the Debt Collection Act of 1982 (P.L. 97-365), as amended. 5 U.S.C. sec. 5514. See also, 5 U.S.C. secs. 5584, 5724; 31 U.S.C. secs. 3711-3719; 45 C.F.R. sec. 30.5 C.F.R. secs. 550, 831; 4 C.F.R. sec. 101 to 105. The Notice stated that the Federal Travel Regulations require that:

the relocation must reduce commuting time between the old residence and the new duty station and the new residence and the new duty station . . . by at least 30 minutes. . . .

The Notice concluded that:

you relocated to a residence that is .7 miles farther from your new duty station and from which it take 4 minutes more travel time than from your old residence . . . your relocation was not incident to your change of station, and you are required to reimburse SSA for the funds expended to relocate you.

The Respondent timely requested a hearing, disputed SSA's determination, and requested a waiver or an offset of the debt. The Respondent argued that SSA agreed to pay the relocation expenses in question and that SSA agreed to waive all requirements in the Federal Travel Regulations. See, R Posthearing Br/3, 4.1/ The Respondent then argued, in effect, that even if the requirements in the Federal Travel Regulations were not waived by SSA, the short distance provisions of the Federal Travel Regulations relied upon by SSA do not apply. The Respondent argued that, alternatively, that if the short distance provisions (or some other comparable provisions) do apply, the Respondent's relocation from one house in Olympia to a second house in Olympia was "incident to" the Respondent's "change of official station" from Olympia to Aberdeen, Washington (a distance of 60 miles) within the meaning of the Federal Travel Regulations. See, R Br/1 to 4.2/ The Respondent also argued that, in equity and good conscience, the debt should be waived or an offset granted. See R Posthearing Br/11,12.

1/ References to the briefs, the transcript, the stipulations, hearing exhibits, and to the Findings of Fact and Conclusions of Law herein are as follows:

DHHS brief	=	DHHS Br/[page]
DHHS Posthearing brief	=	DHHS Posthearing Br/[page]
Respondent's brief	=	R Br/[page]
Respondent's Posthearing brief	=	R Posthearing Br/[page]
Transcript	=	TR/[page]
Joint Written Stipulations	=	Stip/[page]
Joint Exhibits	=	J Ex/[number]
Respondent's Exhibit	=	R Ex/[number]
ALJ Findings of Fact and Conclusions of Law	=	FFCL/[page]

2/ The Respondent, in effect, abandoned the argument that he had established a residence in and relocated to Aberdeen between January 4, 1987 and February 28, 1987.

I determined that an oral hearing was necessary to resolve issues of the credibility or veracity of material witnesses. I granted the Respondent a requested extension, and an oral hearing was held on Wednesday, April 27, 1988, in accordance with guidelines set forth in the April 21, 1988 Prehearing Order and Summary. The parties submitted prehearing briefs. The parties submitted joint stipulations of issue, facts, and applicable statutes and federal regulations at the hearing. The stipulations were entered into the record, exhibits were received, and a written transcript of the oral hearing was prepared. Two witnesses testified on behalf of the Respondent and two witnesses testified on behalf of DHHS. I granted an extension to file briefs requested by DHHS. Posthearing briefs were timely submitted by the parties and received on May 10, 1988.

Most of the facts have been stipulated to and are undisputed, such as the facts covering the relevant observable actions of the Respondent during the period in question. The few facts in dispute surround the Respondent's intent.

ISSUES

The issues are:

1. Whether the debt in the amount of \$24,093.75 claimed by DHHS from the Respondent is due and owing (i.e., whether the decision of SSA, that the Respondent should reimburse SSA the \$24,093.75 that SSA paid to Homequity for the relocation expenses of the Respondent, should be affirmed because the Respondent's relocation was not incident to the change of official station within the meaning of applicable federal law and regulations) and, if so,
2. Whether the Respondent should be granted a waiver or an administrative offset pursuant to 45 C.F.R. sec. 30.15.

APPLICABLE STATUTES AND FEDERAL REGULATIONS

Statutes:

5 U.S.C. sec. 5514; 5 U.S.C. sec. 5724; 5 U.S.C. sec. 5584; 31 U.S.C. secs. 3711-3719.

Federal Regulations, Manuals, and Guidelines

45 C.F.R. Part 16; 45 C.F.R. sec. 30; 5 C.F.R. secs. 550, 831; 4 C.F.R. sec. 101 to 105.

Federal Travel Regulations - GSA Bulletin FPMR 101-7; FPMR A-40 Supp. 10, March 13, 1984 (Effective November 14, 1983), Chapter 2-1.5(b) - Relocation Allowances. (J Ex/1A.)

SSA Administrative Instruction Manual System - Financial Management - Manual Chapter 7 - Travel; Instruction 22 dated November 7, 1986 Relocation Allowances Within the Conterminous United States - FMM, SSA g:07.22.03. (J Ex/2A.)

SSA Administrative Directives Systems Guide with Transmittal Notice 68 dated December 30, 1985 - Travel, General Services SEA, ORC g:240-39. Relocation Allowances. (J Ex/2B.)

SSA Administrative Directives System Guide dated February 28, 1986 with Transmittal Notice 7 SEA ORC f:240-39. (J Ex/2C.)

FINDINGS OF FACT AND CONCLUSION OF LAW 3/4/

Having considered the entire record, the arguments and the submissions of the parties, and being advised fully herein, I make the following Findings of Fact and Conclusions of Law:

1. The Respondent, Gerald M. Anderson, began his employment with SSA on January 3, 1961. He was employed as an Operations Supervisor in the SSA District Office in Olympia, Washington until April 1, 1986. Stip/1.
2. On April 1, 1986, the Respondent was demoted from Supervisor Grade 11 to Claims Representative Grade 10 because of alleged poor performance; he requested a

3/ Some of the proposed findings and conclusions offered were rejected because they were not supported by the evidence in the record, needed to be modified, or were not material. Also, I have incorporated some findings and conclusions elsewhere in this Decision.

4/ Any part of this Decision and Order preceding or following the Findings of Fact and Conclusions of Law which is obviously a finding of fact or conclusion of law is hereby incorporated herein as a finding of fact or conclusion of law; these are primarily the facts and conclusions that were not disputed or which are clear and do not need to be repeated.

hearing before the Merit System Protection Board (MSPB). Stip/1.

3. During informal discussions between the parties while they were before the MSPB (J Ex/5A; Stip 2):
 - (a) the Respondent was offered "early out," to be effective December 31, 1986;
 - (b) he declined this offer because of financial responsibilities involving his residence;
 - (c) SSA offered to transfer him to Mount Vernon, Washington as a Claims Representative;
 - (d) SSA also offered to purchase his residence and pay for all moving expenses should "early out" be made available to him during the first year following the transfer;
 - (e) after discussion with his wife, he requested that SSA change the duty station from Mount Vernon to Aberdeen, Washington, since his wife worked in Olympia and his son attended college in Olympia and could commute from Aberdeen;
 - (f) SSA agreed to this change and settlement was reached on July 23, 1986.

4. By the terms of the MSPB settlement agreement (J Ex/5A; Stip/2):
 - (a) the Respondent withdrew his MSPB appeal;
 - (b) SSA cancelled its demotion action and processed a voluntary downgrade to a claims representative position;
 - (c) SSA agreed to a paid change of station;
 - (d) both parties agreed that "current standard change of station rules will apply to appellant's move."

5. On August 4, 1986, the Respondent completed Form 106 requesting authorization for moving and related travel expenses for his upcoming change of station (Stip/2):
 - (a) he indicated that he and his family were moving to Aberdeen and that he had 18,000 lbs. of household goods to be moved to Aberdeen; he requested two months storage for the household goods;
 - (b) he requested 60 days temporary quarters for himself and his family;
 - (c) he also stated that he would be selling his residence in Olympia and buying a new residence at the new duty station in Aberdeen;

- (d) thereafter, he reaffirmed the information on Form 106 and requested assistance in finding a new home at the new duty station.
6. Based on the foregoing information, a travel order was issued by SSA on August 14, 1986 authorizing (Stip/3):
 - (a) a move and change of station from Olympia to Aberdeen;
 - (b) relocation services to be provided by Homequity;
 - (c) temporary quarters for the Respondent and his family for a period not to exceed 30 days.
7. The relocation service through Homequity included the purchase of the Respondent's residence in Olympia and assistance in locating a new residence at the new duty station in Aberdeen. Stip/3.
8. On September 1, 1986, the Respondent was contacted by Homequity; he informed them that he did not want home finding services at the new duty station in Aberdeen. Stip/4.
9. On December 1, 1986, the Respondent accepted Homequity's offer to purchase his residence at 2920 Southwest 93rd Avenue in Olympia. On December 30, 1986, the Homequity transaction was effective and the Respondent moved out of that residence. Also, on that date his household goods were picked up by Homequity and put in storage in Olympia. Stip/5.
10. At the time the Respondent sold his residence in Olympia to Homequity, he also owned another house in Olympia which he rented; it is located at 5515 Southeast 65th Avenue (hereinafter referred to as the Respondent's "second house"). Stip/5; TR/72, 73.
11. On January 4, 1987, the Respondent and his family traveled to Hoquiam (adjacent to Aberdeen) and they lived in various motels or temporary quarters in that area on a temporary quarters allowance, which was originally authorized by the travel order for 30 days. Stip/6; TR 46 to 70.
12. Also, on January 4, 1987, the Respondent served an eviction notice on his tenants in his second house in Olympia, requiring said tenants to vacate as of February 15, 1987; he informed the tenants that he intended to move into that house when they moved out. Stip/6.

13. On January 5, 1987, the Respondent started working in the Aberdeen Branch Office of SSA. Stip/7.
14. On January 20, 1987, the Respondent requested an extension of temporary quarters allowance and storage of household goods until February 12, 1987. The stated reason was that he was going to move into a furnished rental house. The travel order was amended in compliance with his request, although additional funds had to be allocated. Stip/8.
15. About the same time as he requested an extension of temporary quarters, the Respondent negotiated to housesit in Hoquiam (at 343 Emerson) for a Reverend Voight, until the Respondent's tenants moved out of his second house in Olympia. Stip/8.
16. On February 5, 1987, the Respondent was advised by Joanne Johnson, of DHHS Region X, that he actually had to relocate to the Aberdeen area if he wanted SSA to pay for his moving expenses and that he personally would have to bear the expenses of moving his household goods if he were to move the goods directly from storage to his second house in Olympia. Stip/9.
17. On February 10, 1987, the Respondent rented a house at 446 Eklund in Hoquiam (hereinafter, "Eklund" house). The rental was transacted through a local bank. Also on February 10, 1987, he notified Homequity of the Eklund house address. On February 12, 1987, he had his household goods moved from storage into the rented Eklund house. Stip/10.
18. On February 13, 1987, the Respondent gave notice to the bank that the rental agreement for the Eklund house would be terminated on March 10, 1987. The Respondent never lived in the Eklund house. Stip/11.
19. On February 12, 1987, the Respondent's extended temporary quarters allowance was terminated. Stip/12.
20. On February 13, 1987, the Respondent moved into Reverend Voight's house to house-sit, where he remained until February 28, 1987. Stip/12.
21. The Respondent's tenants moved out of his second house in Olympia on February 15, 1987. The cleaning of that house took until February 28, 1987. Stip/13.
22. On February 18, 1987, the Respondent submitted a voucher for his temporary quarters in the Hoquiam-Aberdeen area

for the period of January 4, 1987 through February 12, 1987; the Respondent used his rented Eklund house address, although he never lived there. Stip/14.

23. On February 28, 1987, the Respondent moved his household goods at his own expense from the rented Eklund house to his second house in Olympia. The Respondent commuted from his second house in Olympia to Aberdeen until his retirement on December 31, 1987. Stip/15.
24. The expenses in question in this case incurred by Homequity on behalf of the Respondent are as follows:

<u>Services provided</u>	<u>Amount</u>	<u>Date paid by SSA to Homequity</u>
(a) Marketing Action Plan	\$750	10/24/86
(b) Guaranteed Home Sale (21% fee to Homequity for purchase, carrying expenses, and subsequent sale of the Respondent's Olympia house)	\$19,005.00	4/3/87
(c) Shipment and Storage of Household goods	\$ 4,338.75	4/11/87

See TR/136 to 145; Notice.

25. The Respondent's transfer from Olympia to Aberdeen was for the good of the government and not primarily for the benefit of the Respondent or at his request. J Ex/6A, 6B.
26. The distance between the Respondent's old residence located at 2920 SW 93rd Avenue, Olympia, WA 98502, and his place of work (official station) in Aberdeen was approximately 55.8 miles; the commuting time by the most direct route was approximately 1 hour 10 minutes. The distance between the Respondent's new residence (second Olympia house), located at 5515 SE 65th Avenue, Olympia, WA 98503, and his new place of work (official station) in Aberdeen was approximately 56.5 miles; the commuting time by the most direct route was approximately 1 hour and 14 minutes. See, Tr/46 to 70.
27. The Respondent did not relocate any closer to his place of work (official station) in Aberdeen; the distance from the Respondent's new residence in Olympia to the Respondent's new official station in Aberdeen was farther than that of his old residence to his new official station in Aberdeen. There was no saving in commuting time.

28. The distance between the Respondent's old residence in Olympia and his new residence (second Olympia house) is approximately 11 miles. TR/50.
29. As a part of the settlement of his MSPB appeal, SSA agreed to pay the Respondent's relocation expenses, including the purchase of his residence in Olympia, as it had proposed to do in its initial offer to transfer him to Mount Vernon, with the provision that "current change of station rules will apply." J Ex/5A.
30. At the time he entered into the settlement agreement with SSA on July 23, 1986, the Respondent considered relocating to the Aberdeen area. The Respondent did not prove that he ever intended to relocate to the Aberdeen area.
31. The Respondent never actually occupied the Eklund house, never established a residence in the Aberdeen area, and never relocated to the Aberdeen area. See, TR/41 at lines 7, 8.
32. In the fall of 1986, the Respondent made some inquiries about finding a residence suitable to his family in the Aberdeen area and his wife made some inquiries regarding a new job. These and the Respondent's other actions were not sufficient to prove that the Respondent intended to relocate to the Aberdeen area. In fact, the Respondent's refusal to accept the free services of Homequity (See FFCC 8) strongly indicates no intent to relocate to the Aberdeen area.
33. At some time prior to February 13, 1987 (and most likely subsequent to September 1, 1986), the Respondent decided to move into the second house in Olympia and commute from there to Aberdeen.
34. The Respondent proved that he had trouble in the fall of 1986 with the tenants that occupied his second Olympia house.
35. The official duty station (Aberdeen) in the instant case was not in a remote area and adequate family housing was available within reasonable daily commuting distance.
36. The change of the Respondent's official station involves a short distance within the same local or general metropolitan area, within the meaning of the short distance provision of the Federal Travel Regulations.

37. Even if the short distance provisions of the Federal Travel Regulations did not apply here, the Federal Travel Regulations require, generally, that a relocation be "incident to" or directly related to the change of official station in order for the agency to pay relocation expenses.
38. The Respondent's relocation to his second house in Olympia did not constitute a relocation "incident to" or directly related to the change of official station, within the meaning of federal law and regulations.
39. The Departmental Grant Appeals Board has jurisdiction over these proceedings. 5 U.S.C. Sec. 5514; 45 C.F.R., Part 16, sec. 30.
40. The MSPB agreement (J Ex/5A) is binding on DHHS, as well as the Respondent.
41. While SSA waived the 12 month continued service requirement in the Federal Travel Regulations, SSA did not waive any of the other eligibility requirements or conditions in the Federal Travel Regulations.
42. The major purpose of the Debt Collection Act, P.L. 97-365, is to improve collection procedures in the federal government. See, 1982 U.S. Code Cong. Ad. News, 3377.
43. The debt in the amount of \$24,093.75 claimed by DHHS from the Respondent is valid, due, and owing (i.e., the decision of the Social Security Administration, DHHS, that the Respondent should reimburse SSA the \$24,093.75 that SSA paid to Homequity for the relocation expenses of the Respondent is affirmed because the Respondent's relocation was not incident to the change of official station within the meaning of applicable federal regulations).
44. A waiver of the debt is not available in this case; the collection of the debt in this case would not be against equity and good conscience or against the best interests of the United States.
45. With regard to offset, there is no proof in the record as to whether the repayment of the debt in the manner suggested by DHHS will cause extreme financial hardship.

DISCUSSION

The Respondent's change of official station or post of duty from the SSA office in Olympia to the SSA office in Aberdeen, a distance of approximately 60 miles, was the result of a settlement agreement dated July 23, 1986 (J Ex/5A), disposing of an appeal before the MSPB of a demotion action involving the Respondent. FFCL 2, 3. The parties agreed that the Respondent would change his official station from Olympia to Aberdeen, and that SSA would pay the Respondent's relocation expenses so long as the Respondent's relocation complied with "current standard change of station rules." FFCL 4; J Ex/5A; TR 18, 19, 25, 37 to 45.

I have affirmed SSA's determination that the Respondent's relocation (i.e., move from one Olympia residence to another) did not comply with "current standard change of station rules" (i.e., the Federal Travel Regulations and the SSA instructions) and that the Respondent is not entitled to relocation expenses for moving from his first Olympia house to his second Olympia house because the Respondent's relocation was not "incident to" or directly related to his "change of official station," within the meaning of the Federal Travel Regulations and the SSA instructions.5/

On August 4, 1986, shortly after entering into the settlement agreement with SSA, the Respondent signed an official document stating to SSA that he intended to relocate from Olympia to Aberdeen, that he wanted his household goods shipped to Aberdeen, and that he intended to buy a residence at his new duty station (Aberdeen) for approximately \$115,000. FFCL 5; J Ex/6A. It was on the basis of these and other similar assertions by the Respondent that SSA paid Homequity the \$24,093.75 in question. FFCL 6, 7. The Respondent never relocated to the Aberdeen area, as he had initially led SSA to believe he would. Instead, within approximately 2 months after he sold his first residence in Olympia, the Respondent relocated to a second house he owned in Olympia.6/

5/ These Federal Travel Regulations are found in Joint Exhibit 1A; the SSA instructions or guidelines interpreting those Federal Travel Regulations are found in Joint Exhibits 2A, 2B, and 2C. See, Stip/3, page 6.

6/ In the two months between the time the Respondent sold his first residence in Olympia (Dec. 31, 1986) and the time
(continued...)

Federal law provides that the relocation expenses of an employee are payable by a federal agency only to the extent authorized in the Federal Travel Regulations, and then only when necessary, appropriate, and if agency funds are available. 5 U.S.C. secs. 5724, 5724a.

The Federal Travel Regulations and SSA's travel instructions provide that a federal agency can authorize the payment of relocation expenses of an employee when such employee is transferred from one official station to another, so long as the relocation meets certain conditions. These conditions were designed to insure that relocation expenses be paid by an agency only if the relocation is "incident to" or directly related to the federal employee's change of official station or post of duty.^{7/} Once paid, a federal agency must seek repayment from a federal employee for relocation expenses if the agency determines that the federal employee's relocation

^{6/}(...continued)

he relocated to his second residence in Olympia (Feb. 28, 1987), the Respondent and his family lived in temporary quarters in the Aberdeen area. FFCL 12. The Respondent never established a residence in the Aberdeen area and never relocated to the Aberdeen area. FFCL 31.

^{7/} An official station or post of duty is defined in the Federal Travel Regulations as (J Ex/1A, para. 2-1.5. (1)):

Official station or post of duty. The building or other place where the officer or employee regularly reports for duty. (For eligibility for change of station allowances, see 2-1.3 and 2-1.5b.) With respect to entitlement under these regulations relating to the residence and the household goods and personal effects of an employee, official station or post of duty also means the residence or other quarters from which the employee regularly commutes to and from work. However, where the official station or post of duty is in a remote area where adequate family housing is not available within reasonable daily commuting distance, residence includes the dwelling where the family of the employee resides or will reside, but only if such residence reasonably relates to the official station as determined by an appropriate administrative official.

did not conform to the conditions required in the Federal Travel Regulations.^{8/}

One condition required by the Federal Travel Regulations is that the new official station be at least 10 miles distant from the old station; another is that the transfer must be for the convenience of the government agency. See, J Ex/1A at para. 2-1.3.a. Here, there is no dispute that SSA agreed to and authorized a paid change of station for the Respondent, that the Respondent's change of station was in the interests of SSA, and the Respondent's new official station was at least 10 miles distant from the old station.

Another condition in the Federal Travel Regulations is that an employee receiving payment for relocation expenses must remain in government service for 12 months or repay the agency for the relocation expenses. In the settlement agreement, SSA agreed to waive this condition and not seek repayment from the Respondent (including the expenses of purchasing his residence) if "early out" became available "in the first year following his transfer." J Ex/5A, para. 5. The Respondent argued that, since SSA waived this one requirement, SSA, in effect, waived all requirements or conditions in the Federal Travel Regulations (and in SSA's guidelines). See, R Posthearing Br/5,6.

This argument that SSA was bound to purchase the Respondent's residence and pay all moving expenses regardless of the Federal Travel Regulations is unpersuasive. It is clear from reading the settlement agreement that the parties never intended such a result. Also as a legal matter, there is no support for such an argument.^{9/} Nevertheless, while the

^{8/} Erroneous payment by an agency of relocation expenses to (or on behalf of) a federal employee constitutes a debt by the federal employee which must be repaid to the agency. Such debt is recoverable by the federal agency pursuant to the provisions of the Debt Collection Act of 1982, as amended. 5 U.S.C. Sec. 5514. See also, 5 U.S.C. Secs. 5724, 5584

^{9/} DHHS argued that it is questionable whether the SSA representative had the legal authority to waive the 12 month continued service requirement found in the Federal Travel Regulations and that there is no estoppel against the United States Government. DHHS Posthearing Br/15, 16. Even though I did not reach this issue because I found that the

(continued...)

argument has no merit, it may be revealing with regard to what the Respondent actually believed from the time he entered into the agreement with SSA on July 23, 1986 (J Ex/5A) until the time Joanne Johnson informed the Respondent that he would not be paid any relocation expenses unless he relocated to Aberdeen. See, FFCL 16.

It appears that the Respondent acted out of ignorance rather than with malice or with fraudulent intent as implied by DHHS. Apparently, his initial interpretation of the settlement agreement was that he would be paid for relocating, no matter where he relocated. He was obviously mistaken. Subsequently, after he was told by SSA on February 5 1987, that he had to relocate to Aberdeen to be paid by SSA for his relocation expenses, the Respondent seemed to believe that moving his household goods to a rented house in the Aberdeen area would qualify him for payment even though he never spent one night in the house. Again he was mistaken and failed to meet the conditions required in the Federal Travel Regulations. A Supervisory Fiscal Management Analyst for SSA testified that if the Respondent had actually moved into the Eklund house and established a residence there, SSA would have considered that he had relocated to the Aberdeen area; she said: "I don't think we'd be here today." TR 41. While the Respondent's plight is unfortunate, he is not entitled to payment, waiver, or offset merely because he might have been under a false impression with regard to the provisions of his settlement agreement and the provisions of the Federal Travel Regulations.

SSA's determination that the Respondent must repay the relocation expenses in question was based on the conclusion that the Respondent's relocation was not "incident to" the Respondent's "change of station," within the meaning of the Federal Travel Regulations, because the Respondent relocated to a residence farther away from his new official station. See, Notice, P. 1. In response, the Respondent argued, in effect, that SSA erroneously relied on requirements found in the "short distance" provisions of the Federal Travel Regulations and that those provisions do not apply in this case. The Respondent also argued, alternatively, that even if the "short distance" provisions (or some other comparable provisions) did apply, the Respondent's change of residence was "incident to" his "change of duty station." R Posthearing Br/5, 6, 11.

9/(...continued)

Respondent is obliged to repay the debt for other reasons, I note that this argument is not persuasive and is not supported by the record.

The Federal Travel Regulations do not expressly define what a "short distance" change of official station means; the term is, however, described as "within the same general local or metropolitan area." The words "general local or metropolitan area" are descriptive rather than restrictive; there is no hard and fast rule. See, 58 Comp. Gen. 751, B-193316 (March 12, 1979), Matter of Harvey Knowles - Relocation Expenses. Here, it appears reasonable to conclude that since the Respondent commuted for almost a year from Olympia to Aberdeen (and that many others do so), the change of station from Olympia to Aberdeen involves a transfer in the same "local or metropolitan area" within the meaning of paragraph 2-1.5b(1) of the Federal Travel Regulations and that the "short distance" provisions apply here.^{10/}

The Respondent's relocation was not "incident to" or directly related to his "change of station," as required for payment under the "short distance" provisions of the Federal Travel Regulations. I conclude that even if the "short distance" provisions did not apply in this case, the Federal Travel Regulations, nevertheless, require, generally, that any federal employee's relocation expenses be incurred as a result of a relocation "incident to" or directly related to his change of official station. See, Matter of Harvey Knowles - Relocation Expenses, supra. Since the relocation expenses incurred by the Respondent were not "incident to" or directly related to the Respondent's "change of official station," SSA is barred from paying for them. See, ___ Comp. Gen. ___, B-179907 (June 7, 1974), Matter of James A. Grant. Furthermore, while a federal agency has broad authority to make a determination as to whether an employee's relocation from one residence to another is in fact "incident to" or directly related to the "change of official station," unless the agency's determination is "arbitrary, capricious, or an abuse of discretion," the determination should stand. Grant,

^{10/} This type of determination should be made on a case-by-case basis. One might also conclude that the relocation from one Olympia residence to another Olympia residence invokes the "short distance" provisions of the Federal Travel Regulations because paragraph 2-1.5 (1) includes residence in its definition of official station or post of duty and the distance between the old and the new residences is only 11 miles. See, footnote 7.

supra. Here, SSA's determination is based on a reasonable interpretation of the facts and the law.11/

11/ In the case of a short distance relocation, a determination of eligibility must be made under the provisions of paragraph 2 - 1.5. b.(1) of the Federal Travel Regulations which provide:

Short distance involved.

(1) Transfers. When the change of official station involves a short distance within the same general local or metropolitan area . . . [relocation] expenses shall be authorized only when the agency determines that the relocation was incident to the change of official station. . . . Circumstances surrounding a particular case (e.g., relative commuting time) may suggest that the move of residence was not incident to the change of official station. [Emphasis added].

A short distance move is defined in the SSA travel instructions or guidelines as follows (J Ex/2A):

. . . In case of a relatively short distance transfer, a determination must be made that the relocation of the residence is incident to the official change of of duty station. A negative determination precludes reimbursement and . . . in making the "incident determination," the distance and commuting times between the following locations are to be taken into consideration:

1. Old residence and old duty station.
2. Old residence and new duty station.
3. Proposed residence and new duty station.

the relocation of the residence ordinarily will not be considered "incident" unless the commuting time between the proposed new residence and the new duty station is appreciably less (at least 30 minutes) than that between the old residence and the new duty station. Each prospective change of residence must be examined individually, and it is advisable to contact the appropriate SSA financial management office or the serving fiscal office prior to authorizing the travel order.

(continued...)

Finally, the Respondent cited several opinions of the Comptroller General involving transfers where the official stations were "relatively close" to each other. See, Matter of Harvey Knowles, supra. These held that the distance and commuting time reduction requirements in the Federal Travel Regulations and in the agency guidelines are general criteria rather than fixed rules. The cases cited by the Respondent do not fit the facts and circumstances in this case. Not one case resulted in an employee moving farther away from his new duty station, as here. There is no compelling reason in this case to disregard the requirements found in the Federal Travel Regulations, as there were in the cited cases.

In support of his argument that the mileage and distance conditions in the Federal Travel Regulations and the SSA guidelines should not be applied in this case, the Respondent argued that his intent should control. The Respondent proposed a finding that, since he initially intended to relocate to the Aberdeen area (and that it was not until February 1987 that he changed his intent and relocated to his second house in Olympia), his relocation was "incident to" his transfer from Olympia to Aberdeen. See, R Br/7, 8; R Posthearing Br/6 to 11. He cited a case where the Comptroller General found that an employee's move was "incident to" a transfer. In that case, the employee had sold his residence and originally intended to relocate near the new duty station, but could not carry out that intention due to his wife's inability to find employment near the new duty station. See, ___ Comp. Gen. ___, B-175822 (June 14, 1972), Matter of Johnny L. Thomas. I conclude that, unlike that case, the Respondent did not prove that he ever intended to relocate to the Aberdeen area. Intent is discerned from action. The Respondent's actions were not consistent with an intent to relocate to the Aberdeen area.

My finding is that at the time of his MSPB agreement with SSA in July 1986, at most, he considered the possibility of moving to Aberdeen. The Respondent and his wife later made inquiries regarding homes in the Aberdeen area and made

11/(...continued)

Thus, relocation expenses are not "incident to the change of official station," unless an SSA employee relocates to a residence closer to the new duty station and there is a savings in commuting time. Here, the Respondent relocated to a residence farther away from the new duty station and his commuting time was increased, not decreased.

inquiries regarding employment for her, but never took action consistent with an intent to relocate to the Aberdeen area. Rather, the Respondent's actions are more consistent with an intent to relocate to his second home in Olympia. The Respondent refused the free relocation services of Homequity (FFCL 8) on September 1, 1986. Also, on January 4, 1987, the Respondent told his tenants to vacate his second house in Olympia because he planned to move there. Certainly by the time he cancelled the rental of the Eklund house on February 13, 1987, he had decided to relocate to his second house in Olympia. Certain events -- the Respondent's half-hearted efforts to find housing outside of Olympia, his wife's minimal efforts to find a suitable job in Aberdeen, the problems with the tenants in his second house -- may have influenced him, but the Respondent did not prove that he made up his mind only after these events. Furthermore, some of these events occurred prior to the sale of his first residence in Olympia, in December 1986, and the Respondent should have stopped the sale of his first Olympia house if these events, in fact, caused him to change his mind.

At the hearing on April 27, 1988, the Respondent seemed unsure and hesitant regarding his intentions with regard to relocating to the Aberdeen area in 1987 and seemed to continue to insist that he had relocated to the Eklund house (in the Aberdeen area).^{12/} This indicates to me that the Respondent was tenuous about his 1987 intentions, that he relocated to his second Olympia house in knowing disregard of the advice given by SSA (or because he believed that he had somehow done all that was required of him) and subsequently tried to retain his relocation gains by a pretext or mistaken impression which ultimately even he recognized to be without merit and thus abandoned. This makes his testimony less credible as to how and when he decided to move to his second residence in Olympia.

Despite the provisions of 45 C.F.R. sec 30.15(p), waiver is not available in this case because 5 U.S.C. Sec. 5584 (a) appears to give the Comptroller General the sole authority to consider waiver if the debt is above \$500. Even if I had authority to consider waiver in this case, I would find that collection of the debt in this case is not against equity and good conscience and is in the interests of the United States because the Respondent's claim is of doubtful validity. The Respondent submitted no proof or argument regarding offset.

^{12/} In the Posthearing brief, the Respondent abandoned this argument.

Accordingly, SSA's determination is affirmed, the debt was proven valid by DHHS, and waiver or offset is not available in this case.^{13/}

ORDER

Based on the evidence in the record, federal law, and federal regulations and guidelines, it is hereby Ordered that

- (1) SSA's determination (as outlined in DHHS's notice) is affirmed;
- (2) The Respondent is indebted to SSA in the amount of \$24,093.75;
- (3) The Respondent's request for a waiver or an offset is denied.

/s/

Charles E. Stratton
Administrative Law Judge

^{13/} This is the final administrative determination of the Department of Health and Human Services in this case; there are no other administrative remedies. If the Respondent wishes to seek judicial review, he is free to do so in the appropriate judicial tribunal of the United States, provided he acts within the time limits prescribed.