



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: J. Richard Murdock

File: B-266286

Date: October 11, 1996

DIGEST

The Federal Travel Regulation specifically excludes costs connected with structural alterations of living quarters from reimbursement as a miscellaneous expense incident to a transfer. 41 C.F.R. § 302-3.1(c)(13) (1995). The cost of structural alterations to the new residence of a transferred handicapped employee may not be reimbursed as a "reasonable accommodation" under the authority of the Rehabilitation Act of 1973, 29 U.S.C. §§ 701, 791 (1994).

DECISION

This is in response to a request for an advance decision submitted by John F. Best, Chief, Finance and Accounting Division, Directorate of Resource Management, Department of the Army, U.S. Army Corps of Engineers,¹ on the appropriateness of reimbursing a mobility impaired individual for structural alterations to his new residence in connection with a Permanent Change of Station (PCS) under the authority of the Rehabilitation Act of 1973.

BACKGROUND

J. Richard Murdock, an employee of the U.S. Army Corps of Engineers was authorized a PCS from Brussels, Belgium, to Vicksburg, Mississippi, effective February 1994. Mr. Murdock's new residence in Vicksburg required structural alterations for the constructing of ramps and widening of doors to accommodate his disability. The cost was approximately \$4,000. Mr. Murdock is requesting reimbursement for part of the cost of these alterations as "miscellaneous expenses" in connection with his PCS. Specifically, he is requesting the maximum reimbursement allowed under title 5 for miscellaneous expenses, which in his case is \$1,804.80 (two weeks basic compensation). 41 C.F.R. § 302-3.3(b) (1995).

¹Reference: CELMM-RM-F (37)
Memphis District Corps of Engineers

The issue raised by the Corps is whether the alteration costs may be reimbursed under the authority of the Rehabilitation Act of 1973 despite the specific provision in the Federal Travel Regulation making the costs of structural alterations as not allowable. As discussed below, these costs may not be allowed.

ANALYSIS AND CONCLUSION

Title 5 U.S.C. § 5724(a)(1) (1994) authorizes reimbursement of travel and transportation expenses of an employee transferred in the interest of the government. Section 5724a(b) and the implementing regulations in the Federal Travel Regulation (FTR), 41 C.F.R. part 302-3, authorize reimbursement of miscellaneous expenses incident to a transfer. The purpose of this allowance as stated in 41 C.F.R. § 302-3.1(a) is "for defraying various contingent costs associated with discontinuing residence at one location and establishing residence at a new location in connection with an authorized or approved permanent change of station."

The FTR allows reimbursement of costs "related to expenses that are common to living quarters, furnishings, household appliances, and to other general types of costs inherent in relocation of a place of residence" 41 C.F.R. § 302-3.1(b). Types of costs specifically listed as not covered by the miscellaneous expense allowance under 41 C.F.R. § 302-3.1(c)(13) include "costs incurred in connection with structural alterations; remodeling or modernizing of living quarters, garages or other buildings to accommodate privately owned automobiles, appliances or equipment; or the cost of replacing or repairing worn-out or defective appliances, or equipment shipped to the new location." Since Mr. Murdock's claimed costs clearly involve structural alterations to his privately-owned property, they are excluded as a reimbursable miscellaneous expense by this FTR provision.

Therefore, the question is whether the claim may be paid under the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 701 (1994), which requires federal agencies to formulate and implement programs for the employment and advancement of handicapped individuals. 29 U.S.C. § 791(b) (1994). Regulations implementing the Rehabilitation Act issued by the Equal Employment Opportunity Commission (EEOC) require federal agencies to make "reasonable accommodation" to known limitations of a qualified handicapped employee, unless such accommodation would impose an undue hardship on the operation of the agency's program. 29 C.F.R. § 1613.704(a) (1995).

Reasonable accommodation may include: making the agency's facility readily accessible to and usable by handicapped persons; job restructuring; modified work schedules; acquisition of equipment, readers and interpreters; and other similar actions. 29 C.F.R. § 1613.704(b) and § 1613.707. In sum, agencies are required to gather sufficient information to determine what accommodations are necessary to

enable the handicapped to perform their jobs. Mantolete v. Bolger, 767 F.2d 1416, 1423 (9th Cir. 1985); Buckingham v. United States, 998 F.2d 735 (9th Cir. 1993).

To assist a handicapped employee to perform official travel, an agency is authorized as a reasonable accommodation to pay for the services of an attendant to accompany a blind employee to his new post of duty, Alex Zazow, 59 Comp. Gen. 461(1980); to reimburse the cost of shipping a specially equipped automobile between duty stations for an employee who does not have the use of her arms, Norma Depoyan, 64 Comp. Gen. 30 (1984); and to pay the extra baggage handling fees for a handicapped employee when necessary to accommodate the employee's handicap. Alyan R. Hill, 68 Comp. Gen. 242 (1989).

The agency's counsel cites the above cases and, in addition, cites McWright v. Alexander, 982 F.2d 222 (7th Cir. 1992), in support of the view that Mr. Murdock's residence alteration costs may be allowed as a reasonable accommodation. In McWright, the plaintiff alleged that her agency had failed to make a reasonable accommodation to her handicap by failing to show flexibility in granting her child-care leave for her adoptive child, while routinely granting such leave to biological mothers employed by the agency. The lower court had dismissed the complaint, but the United States Court of Appeals reversed and remanded the case back to the lower court to determine whether the agency had illegally discriminated against her based on her handicap.

In the course of its opinion, the court stated that the "Rehabilitation Act calls for reasonable accommodations that permit the handicapped to lead normal lives, not merely accommodations that facilitate the performance of specific employment tasks." Id., at 227. In making that statement, the court rejected the lower court's suggestion that the plaintiff's complaint of unequal treatment, even if correct, did not relate to any specific condition of work and, thus, was not within the Act. The Court of Appeals concluded instead that if the agency's actions regarding child-care leave in fact did have a disparate impact on handicapped employees, the complaint would have merit.

There is no suggestion in this case that the Corps of Engineers unfairly treats handicapped employees or that its actions have a disparate impact on such employees. The issue here is whether an agency, by using the authority of the Rehabilitation Act, may allow certain residence expenses incurred by a transferred handicapped employee when such costs otherwise are not allowable under the FTR. McWright, which dealt with an allegation of discrimination against handicapped employees, has no application to this situation.

Of the various travel and relocation cases cited above, the agency's counsel believes that 64 Comp. Gen. 30, supra, is particularly relevant to Mr. Murdock's claim. There, as stated, the costs of shipping a specially equipped automobile to a

handicapped employee's new duty station were allowed. The rationale for doing so, as explained in the decision, was that it was less costly to ship the automobile than the alternative—paying the expenses of the employee and a driver to transport the car to the new duty station, as permitted under 59 Comp. Gen. 461, supra. No similar rationale exists for reimbursing Mr. Murdock's residence alteration expenses. As for the other cited cases, they involve reimbursement of costs incurred in the performance of official travel. Mr. Murdock's costs were incurred for a purpose unrelated to the performance of official travel, namely, to enable him to have mobility in his personal residence. None of the cited cases authorizes the allowance of the type of costs claimed here.

The EEOC has provided guidance on the extent of the obligation to make reasonable accommodation in accordance with the requirements of the "Americans With Disabilities Act" (ADA) at 42 U.S.C. § 12111(9). Although the ADA does not apply to federal employers, 42 U.S.C. § 12111(5)(B)(i), the EEOC states that its implementation of the ADA "does not apply a lesser standard than the standards applied under title V of the Rehabilitation Act of 1973 or the regulations issued by federal agencies pursuant to that title." 29 C.F.R. § 1630.1(c). The ADA guidance states that the obligation to make a reasonable accommodation does not extend to the provision of adjustments or modifications that are primarily for the personal benefit of the individual with a disability. It further states that if an adjustment or modification assists the disabled or handicapped employee throughout his or her daily activities, on and off the job, it is a personal item that the employer is not required to provide as a reasonable accommodation, such as a prosthetic limb, wheelchair, or eyeglasses. See APPENDIX to 29 C.F.R. part 1630, Interpretive Guidance, section 1630.9 (1995).

Similarly, an agency's responsibility to assist a handicapped employee to perform the duties of the job does not extend to the providing of financial assistance to pay for the cost of items that are used by the employee in his daily activities. While Mr. Murdock's need for the alterations resulted from a PCS, his situation is no different from that of any transferred employee who makes alterations to his new residence to meet his personal needs. The burden to pay for such alterations is to be borne by the employee, not the employer.

Accordingly, reimbursement may not be made for the costs incurred by Mr. Murdock in connection with the structural alterations to his residence.

/s/Seymour Efros
for Robert P. Murphy
General Counsel

