

DOCUMENT RESUME

03197 - [A2313438]

[Meritorious Claim and Request for Reimbursement for Transfer Expenses]. B-189205. August 16, 1977. 11 pp.

Decision re: Wayne E. Holt; by Robert P. Keller, Deputy Comptroller General.

Issue Area: Personnel Management and Compensation: Compensation (305).

Contact: Office of the General Counsel: Civilian Personnel.

Budget Function: General Government: Central Personnel Management (805).

Organization Concerned: National Security Agency, Central Security Service, Fort George G. Meade, MD.

Authority: Meritorious Claims Act (31 U.S.C. 236). Truth in Lending Act, title I (P.L. 90-321). F.T.R. (FPMR 101-7), para. 2-8.3c. F.T.R. (FPMR 101-7), para. 2-8.5. P.T.D. (FPMR 101-7), para. 2-6.2. F.T.R. (FPMR 101-7), para. 2-3.1c. F.T.R. (FPMR 101-7), para. 2-5.4. 12 C.F.R. 226. 53 Comp. Gen. 157. 49 Comp. Gen. 483. B-186734 (1976). B-184993 (1976). B-179414 (1974). B-185863 (1976). B-185847 (1976). B-180981 (1974).

Consideration was requested of an employee's claim regarding expenses incurred incident to transfer involving: (1) transportation and storage of household effects; (2) real estate transactions; and (3) temporary quarters subsistence. Requests were made that the first portion of the claim be reported to Congress under the Meritorious Claims Act and that reimbursement be made for other specified items. The claim did not involve circumstances of an unusual nature and therefore was not for reporting to Congress. Reimbursements for fees incident to real estate transactions were disallowed as they were considered finance charges. Replacement of garbage disposal was not allowable, and claim for transporting children while occupying temporary quarters was not reimbursable. (HTW)

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DECISION



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

FILE: B-189295

DATE: August 16, 1977

MATTER OF: Wayne E. Holt - Meritorious claim,
transfer expenses

- DIGEST:**
1. Employee's claim for difference between actual cost of shipping and storing household goods to new duty station and the amount of reimbursement under the commuted rate system is not for reporting to Congress under the Meritorious Claims Act. Claim does not involve equitable circumstances of unusual nature, nor is a similar situation unlikely to recur in light of the regulatory provisions requiring transportation of household goods to be authorized on commuted rate basis absent a showing of savings to the Government from use of the actual expense method.
 2. Claim for reimbursement of 1 percent "loan origination fee" incident to purchase of residence is disallowed inasmuch as fee is a finance charge under the Truth in Lending Act. A "closing fee" incident to the sale of employee's former residence is for disallowance on the same basis absent evidence that it is excludable from the finance charge under Regulation Z, 12 C.F.R. § 226.4(e)
 3. Fee for "certification of taxes due" paid by buyer of residence to lending institution incident to its proration of buyer's and seller's tax obligation for year in which settlement is made is a finance charge under the Truth in Lending Act and hence not a reimbursable item of real estate expense.
 4. National Security Agency employee who paid \$1,000 of buyer's closing costs incident to the sale of his former residence in Baltimore, Maryland, may not be reimbursed that amount as a real estate transaction expense incident to transfer since such costs are not customarily paid by the seller in the Baltimore area.

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5. Employee may not be reimbursed \$125 for replacing the garbage disposal in the residence he sold at his former duty station incident to his transfer. FTR para. 2-6.2d prohibits reimbursement of operating and maintenance expenses as real estate transaction expenses and FTR para. 2-3.1c specifically provides that costs of replacing worn out or defective appliances are not costs reimbursable as miscellaneous expenses.
6. Employee's claim for \$76.50 for transporting his children to and from school while occupying temporary quarters is not reimbursable as a temporary quarters subsistence expense in view of the specific language of FTR para. 2-5.4b requiring disallowance of "expenses of local transportation incurred for any purpose during occupancy of temporary quarters."

This decision is in response to a request by the National Security Agency (NSA) that we consider the claim of its employee, Mr. Wayne E. Holt, for expenses incurred incident to transfer from Fort Meade, Maryland, to the Aerospace Data Facility, Colorado, in August 1976. Mr. Holt's claim was submitted through the Per Diem, Travel and Transportation Allowance Committee, where it was assigned Control No. 77-20 and forwarded to this Office by letter of June 7, 1977.

The employee's claim involves three separate categories of expense: expenses for transportation and storage of household effects, real estate transaction expenses, and temporary quarters subsistence expenses.

The first part of Mr. Holt's claim is an item of \$572.39 for shipment and transportation of his household goods and personal effects. NSA asks that we report it to the Congress pursuant to the provisions of 31 U.S.C. § 236 (1970), the Meritorious Claims Act. The Federal Travel Regulations (FTR) (FPMR 101-7) paras. 2-8.3c and 2-8.5 (May 1973) establish the following procedures for determining whether the Government is to provide for shipment

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and storage of the employee's household goods on an actual expense basis or whether the employee is to be responsible for shipment of his household goods, with reimbursement therefor made under the commuted rate system:

"2-8.3. Transportation within the conterminous United States.

* * * * *

"c. Use of commuted rate or actual expense method.

"(1) Considerations: When the commuted rate system is used, the Government is relieved of the responsibility and administrative expense of selecting and dealing with carriers and making other arrangements for transporting employees' household goods; however, the Government cannot take advantage of special discounts which may be offered. On the other hand, when the actual expense method is used, the Government incurs the additional expenses of selecting and dealing with carriers, preparing bills of lading, auditing and paying transportation vouchers, supervising the packing of household goods, handling employee loss and damage claims, and other incidentals.

* * * * *

"(3) Policy. The general policy is that commuted rates shall be used for transportation of employee's household goods when individual transfers are involved, and that appropriate action, depending on the amount of goods to be transported, shall be taken to estimate and compare actual expense method costs with commuted rate costs when groups of employees are transferred between the same official stations at approximately the same time so that the method resulting in less cost to the Government may be used. Specific procedures to be followed are contained in 2-8.3c(4).

"(4) Criteria for use of the actual expense method.

"(a) Individual transfers. Agency experience with the actual expense method has shown that shipment by Government bill of lading does not result in savings simply because a line-haul discount is available. Therefore, the commuted rate system shall be used for individual transfers without consideration being given the actual expense method, except that the actual expense method may be used if the actual costs to be incurred by the Government for packing and other accessorial services are predetermined (at least as to price per 100 pounds) and if that method is expected to result in a real savings to the Government of \$100 or more. (For intrastate transfers, see 2-8.3c(4)(d).)

* * * * *

"2-8.5. Temporary storage.

* * * * *

"b. Allowable expenses.

"(1) Commuted rate system. In connection with transportation within the continental United States under the commuted rate system, costs of temporary storage within the applicable weight limit will be reimbursed to the employee in the amount of his costs for storage including in and out charges and necessary drayage, but not to exceed the commuted rates for storage in GSA Bulletin FPMR A-2. A receipted copy of the warehouse or other bill for storage costs is required to support reimbursement."

Mr. Holt was authorized shipment and storage of his household effects under the commuted rate system. NSA states that the order issuing authority apparently was unable to determine that cost savings would accrue to the Government by use of the actual expense method. Under the commuted rate system, Mr. Holt was

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reimbursed \$3,602.50, but expended \$4,174.89 for transportation and storage of household effects. His claim for \$572.39 represents the difference between these amounts.

In requesting consideration of Mr. Holt's transportation and storage claim under the Meritorious Claims Act, NSA notes that when an employee has been authorized reimbursement under the commuted rate system there is no authority under which he may be compensated the difference between the commuted rate payment and the amount he pays the commercial carrier. We are told, however, that there are extenuating circumstances and considerations in Mr. Holt's case. These include NSA's need for highly trained personnel to meet its constantly expanding mission with respect to national intelligence requirements and the fact that its employees are subject to transfer every fourth year. NSA explains that when an employee is confronted with having to pay hundreds of dollars out-of-pocket to comply with permanent change of station orders every 4 years, it becomes increasingly difficult to recruit, train, and retain the quality of personnel necessary to man NSA's stations. With respect to Mr. Holt's situation specifically, NSA states:

"* * * In our opinion, the claimant, through no fault of his own, has suffered considerable monetary loss, and failure to grant the claimant the avenue of seeking redress under the Meritorious Claim Act would constitute unfair treatment. We are not unmindful of the fact that this might be considered, and might constitute preferential treatment for this claimant over others who have or who may become similarly situated based on the fact that it is likely to recur; and, for that reason, we are pursuing a separate course of action through legislative channels, to obtain an exception from the requirement that household goods shipment, within CONUS be reimbursed under the commuted rate system. We are endeavoring to obtain special authority to use the actual expense (GBL) method in all cases. In the instant case, however, we strongly recommend that this case be forwarded for consideration under the Meritorious Claim Act."

The Meritorious Claims Act provides that when a claim is filed in this Office that may not be lawfully adjusted by use of an appropriation theretofore made, but which claim, in our judgment, contains

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such elements of legal liability or equity as to be deserving of the consideration of Congress, it shall be submitted to Congress with our recommendation. The remedy is an extraordinary one and its use is limited to extraordinary circumstances. 53 Comp. Gen. 157 (1973). The cases which we have reported to Congress generally have involved equitable circumstances of an unusual nature which are unlikely to constitute a recurring problem since to report to Congress a particular case when similar equities exist or are likely to arise with respect to other claimants would constitute preferential treatment over others in similar circumstances. Matter of Daniel Gallup and Henry K. Bearden, B-185847, May 26, 1976.

As indicated by NSA's letter of submission, Mr. Holt's situation is not an isolated one. It is not an infrequent occurrence that an employee authorized to transport his household effects on a commuted rate basis is faced with commercial carrier charges that exceed his commuted rate entitlement. Also, consistent with FTR para. 2-8.3c(4), quoted above, a significant portion of all transfers are accomplished under the commuted rate system. The fact that NSA intends to obtain special authority to use the actual expense method in all transfer cases does not alter the fact that Mr. Holt's situation is not an unusual one. Accordingly, we are of the opinion that his claim for reimbursement of \$527.39 in transportation and storage charges does not contain such elements of legal liability or equity as warrant reporting to Congress under the Meritorious Claims Act.

The employee's claim for reimbursement of real estate expenses is not presented for consideration under the Meritorious Claims Act. Rather, Mr. Holt feels he is legally entitled to reimbursement of the following items of expense:

Residence purchase expenses

Loan origination fee	\$ 428.50
Tax certificate	5.00

Residence sale expenses

Closing fee	25.00
Buyer's closing costs	1,000.00
Garbage disposal replacement	125.00

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The loan origination fee of \$428.50 represents a payment to the Utah Mortgage Loan Corporation equal to 1 percent of the amount of the mortgage obtained by Mr. Holt for the purchase of his new residence in Colorado. Paragraph 2-6.2 of the FTR, in effect in November 1976 at the closing date of the purchase transaction, provides for reimbursement of certain real estate expenses. However, the following language states that items of expense determined to be part of the finance charge under the Truth in Lending Act are not reimbursable:

"d. Miscellaneous expenses. The following expenses are reimbursable with respect to the sale and purchase of residences at the old official station or if they are customarily paid by the purchaser of a residence at the new official station, to the extent they do not exceed amounts customarily paid in the locality of the residence * * *. Interest on loans, points, and mortgage discounts are not reimbursable. Notwithstanding the above, no fee, cost, charge, or expense is reimbursable which is determined to be a part of the finance charge under the Truth in Lending Act, Title I, Public Law 90-321, and Regulation Z issued pursuant thereto by the Board of Governors of the Federal Reserve System. Property taxes and operating or maintenance costs also are not reimbursable. * * *"

Regulation Z is published at 12 C.F.R. Part 226 (1976) and provides in pertinent part as follows:

"226.4 Determination of finance charge.

"(a) General rule. Except as otherwise provided in this section, the amount of the finance charge in connection with any transaction shall be determined as the sum of all charges, payable directly or indirectly by the customer, and imposed directly or indirectly by the creditor as an incident to or as a condition of the extension of credit, whether paid or payable by the customer, the seller, or any other person on behalf of the customer to the creditor or to a third party, including any of the following types of charges:

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"(1) Interest, time price differential, and any amount payable under a discount or other system of additional charges.

"(2) Service, transaction, activity, or carrying charge.

"(3) Loan fee, points, finder's fee, or similar charge.

* * * * *

"(e) Excludable charges, real property transactions. The following charges in connection with any real property transaction, provided they are bona fide, reasonable in amount, and not for the purpose of circumvention or evasion of this part, shall not be included in the finance charge with respect to that transaction:

"(1) Fees or premiums for title examination, abstract of title, title insurance, or similar purposes and for required related property surveys.

"(2) Fees for preparation of deeds, settlement statements, or other documents.

"(3) Amounts required to be placed or paid into an escrow or trustee account for future payments of taxes, insurance, and water, sewer, and land rents.

"(4) Fees for notarizing deeds and other documents.

"(5) Appraisal fees.

"(6) Credit reports."

The 1 percent loan origination fee or service charge paid by Mr. Holt falls within the definition of a finance charge under Regulation Z and, as such, is not reimbursable as a real estate transaction expense. See Matter of Robert L. Armstrong, B-186734, September 23, 1976. It appears that the \$25 "closing fee" paid by

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Mr. Holt in connection with the sale of his former residence is also a finance charge. The file does not disclose the recipient of that amount. However, we assume that the payment was made to a lending institution based on NGA's determination that such fee constituted a finance charge. Insofar as that is the case and since the fee is not otherwise shown to be an excludable charge under Regulation Z, it is for disallowance. In addition, we have held that the fee paid by the purchaser of a residence to a lending institution incident to its proration of the tax obligation of the buyer or seller for the year in which settlement is made is a finance charge and is not a reimbursable item of real estate expense. 49 Comp. Gen 483 (1970); Matter of Jerrold J. Wahl, B-180981, October 1, 1974. Insofar as the \$5 fee for a certificate of taxes due paid by Mr. Holt was imposed by the lending institution and is for such purpose, it may not be reimbursed under the above-cited decisions.

The largest item of expense claimed by Mr. Holt as a real estate expense is the \$1,000 for buyer's closing costs he paid in connection with the sale of his former residence. The employee has explained that because his orders were issued only 30 days before the effective date of his permanent change of station, he was forced to reduce the asking price of his house by \$2,000 after it had been on the market 2 weeks. The offer he received for the house was for that reduced amount, with the stipulation that he pay \$1,000 of the buyer's closing costs. Mr. Holt adds that if he had not been under pressure of time he would have been able to find a buyer at the original asking price. The employee's claim for this was disallowed by NSA on the basis of the Department of Housing and Urban Development's confirmation of the fact that while the practice of the seller paying a portion of the buyer's settlement costs does occur in a small percentage of cases, it does not occur with such frequency as to constitute a customary practice in Maryland.

As indicated by the above-quoted excerpt from FTR para. 2-6.2d, real estate transaction expenses incurred by the seller of a residence may be paid only if customarily paid by the seller of a residence at the old official station. With respect to the payment by the employee-seller of a residence on behalf of the purchaser, we have held that the fact that the practice of a seller assuming a buyer's closing costs by contract is quite common does not raise it to the status of a custom. Matter of Albert C. Logan, B-184993,

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September 20, 1976; Matter of John B. Byrd, B-179414, January 25, 1974. Where, as in Baltimore, it is not customary for the seller to contractually assume a portion of the buyer's closing cost obligation, amounts so assumed are not reimbursable. Compare Matter of William I. Massengale, B-185862, August 25, 1976.

The \$125 amount claimed by Mr. Holt for replacing the garbage disposal in his former residence is an operating or maintenance expense specifically excluded as a reimbursable real estate expense by the above-quoted language of FTR para. 2-6.2d. Neither is it reimbursable as an item of miscellaneous expense inasmuch as FTR para. 2-3.1c specifically provides:

"c. Types of costs not covered. This allowance shall not be used to reimburse the employee for costs or expenses incurred which exceed maximums provided by statute or in these regulations; costs or expenses that he incurred but which are disallowed elsewhere in these regulations* * *. Examples of these types of costs which are not reimbursable from this allowance are as follows:

* * * * *

"(13) 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."

We find no authority for reimbursing Mr. Holt the \$125 paid to install a new garbage disposal, notwithstanding his suggestion that the old garbage disposal might not have corroded if it had been in continual use.

Finally, Mr. Holt claims reimbursement for \$76.50 in temporary quarters subsistence expenses which represents the cost, at 15 cents per mile, of transporting his three children to school for the period that the family occupied temporary quarters. In explanation of this expense, he states:

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"5. TQSE. By virtue of being in temporary quarters, my children were denied school bus access by the city of Aurora, CO. Because of this, my wife had to provide auto service for them to three different schools, elementary, middle, and high school, all at different time schedules during the day. This amounted to 34 (odometer) miles per school day. * * *"

Temporary quarters subsistence expenses are intended to cover meals, lodging, and laundry expenses. Paragraph 2-5.4 of the FTR states that allowable subsistence expenses include "only charges for meals * * * lodging, fees, and tips incident to meals and lodging, laundry, and cleaning and pressing of clothing." Sub-paragraph 2-5.4h specifically provides that reimbursement for "expenses of local transportation incurred for any purpose during occupancy of temporary quarters shall be disallowed." In view of the specific prohibition against reimbursement for local transportation for any purpose, Mr. Holt's claim for \$7⁰⁰.50 for transporting his children to and from school is also for disallowance.

W. J. Kester
Deputy Comptroller General
of the United States