

DOCUMENT RESUME

G3816 - [B2914173]

[Reimbursement for Real Estate Expenses]. S-188809. October 13, 1977. 4 pp.

Decision re: George F. Rakous, Jr.; by Paul G. Dembling, Acting 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 (905).

Organization Concerned: Department of the Army.

Authority: 5 U.S.C. 5724a(4). I.T.R. (FPMR 101-7), para. 2-6.1e. 54 Comp. Gen. 553. B-182564 (1975). B-181611 (1974).

An employee appealed the disallowance of his claim for reimbursement of real estate expenses incurred in connection with his permanent change of official station. An employee can request an extension of the 1-year initial authorization period even when the request is made more than 2 years after the transfer as long as the real estate transaction itself was completed within 2 years of the transfer. The claim was allowed. (SW)

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DECISION



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

FILE: B-188809

DATE: October 13, 1977

MATTER OF: George F. Rakous, Jr. - Reimbursement for
real estate expenses - Time limitation

DIGEST: Transferred employee reported at new duty station July 1, 1974, and purchased residence December 12, 1975. He did not request extension of 1-year initial authorization period to purchase residence until more than 2 years after his transfer. Paragraph 2.6.1e, FTR (PPMR 101-7) (1973), requires that the purchase be made within 2 years of transfer, but does not specify time within which request for extension must be filed. His claim is allowed since purchase was made within 2 years and request may be made even after 2 years have passed. 54 Comp. Gen. 553 (1975) is modified.

This action is in response to an appeal by Mr. George F. Rakous, Jr., an employee of the Department of the Army, from the Settlement Certificate dated March 18, 1977, issued by our Claims Division, which disallowed reimbursement of real estate expenses incurred by Mr. Rakous in connection with his permanent change of official station from Red River Army Depot, Texarkana, Texas, to Fort Monmouth, New Jersey, in July 1974.

Pursuant to Travel Order No. 437-74 dated May 15, 1974, Mr. Rakous was transferred from the Red River Army Depot to Fort Monmouth. He reported for duty at his new official station on July 1, 1974, and on December 12, 1975, purchased a condominium at his new duty post. Mr. Rakous did not request an extension of time for reimbursement until September 2, 1976, when he requested information concerning a possible extension, stating that he had not made a claim prior to that time as he was unaware that the Government would reimburse such real estate expenses. He was advised by the Finance and Accounting Officer at Fort Monmouth on September 15, 1976, that his maximum period of entitlement had lapsed 2 years after he had reported to his new duty station.

Reimbursement to Federal employees of certain expenses incurred in connection with residence transactions incident to a transfer of duty station is governed by section 5724a(4) of title 5, United States Code (1970), and the regulations issued pursuant thereto.

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The implementing regulations are contained in part 6 of chapter 2, Federal Travel Regulations (FTR) (FPMR 101-7) (May 1973), and restated for civilian employees of the Department of Defense in Volume 2 of the Joint Travel Regulations (JTR). The provision allowing an additional period of time not to exceed 1 year regardless of the reasons therefor for the sale or purchase of a residence that may be extended by the commanding officer of the activity bearing the cost, or his designee, so long as it is determined that the residence transaction is reasonably related to the permanent change of station, initially appeared in the JTR, C8350, in change 91, dated May 1, 1973. The effective date of that change was October 28, 1972, and applied to any employee who on such date was within his initial year of the transfer or whose effective date of transfer was on or after October 28, 1972. Prior to this date the JTR provided for an extension of the initial 1-year period only under certain conditions not applicable here. It is clear from the foregoing that, at the time Mr. Rakous reported for duty at his new official station in July 1974, the regulatory provision governing the sale or purchase of a residence which allows an additional period of time not to exceed 1 year, regardless of the reasons therefor, had been in effect for almost 2 years.

Section 2-6.1e, FTR, specifically provides as follows:

"Time limitation. The settlement dates for the sale and purchase or lease termination transactions for which reimbursement is requested are not later than 1 (initial) year after the date on which the employee reported for duty at the new official station. Upon an employee's written request this time limit for completion of the sale and purchase or lease termination transaction may be extended by the head of the agency or his designee for an additional period of time, not to exceed 1 year, regardless of the reasons therefor so long as it is determined that the particular residence transaction is reasonably related to the transfer of official station."

In the instant case, Mr. Rakous purchased a condominium at his new official station in December 1975, approximately 1-1/2 years after he had reported for duty and within the maximum 2-year period

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allowed by the regulation. However, his written claim for a 1-year extension of the settlement date limitation to the Commander, United States Army Finance and Accounting Center, was not submitted until December 15, 1976, several months after the expiration of the 2-year time limitation set forth in the regulation.

In 54 Comp. Gen. 553 (1975), we concluded that restricting the period during which an employee may make a request for an extension to the initial 1-year period would be unnecessarily restrictive. In that decision, we stated that we had no objection to the agency's approval of the employee's request for a 1-year extension for the sale of his residence not to exceed 2 years from the effective date of transfer "provided the request has been made in writing within the time limitation as required by the regulation." The proviso requiring that the request for an extension be made in writing before the expiration of the 2-year period constituted obiter dictum; that is, such statement was not required in reaching a determination in the case as the record showed that the employee had made a written request for an extension within the 2-year time limitation.

Further, in Matter of Morris Wiseman, B-182564, November 26, 1975, where the employee requested an extension of time to sell his residence at his old duty station because renovation had not been completed, we held that approval of an extension by the agency was valid even though approved more than 2 years after the effective date of the transfer. In Wiseman, we overruled that portion of a prior case, Matter of Daryl L. Mahoney, B-181611, December 26, 1974, which stated that an extension must be approved within 2 years of the effective date of the transfer. In overruling that portion of Mahoney, we stated that requiring agency review and other administrative appeals to be completed within 2 years is a condition not found in the statute or regulations and would lead to unnecessarily restrictive results.

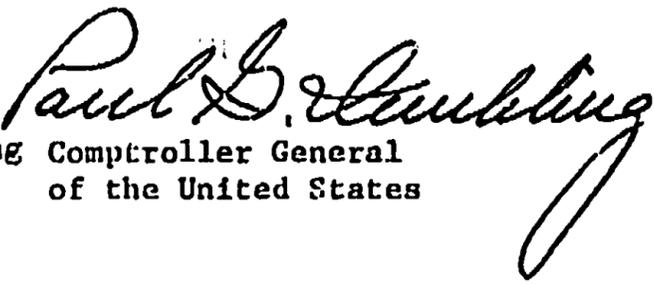
In the instant case, Mr. Rakous not only purchased his condominium well within the 2-year limitation period, but the agency could have granted an extension if it had received a written request from the employee within the 2-year regulatory period. As noted in 54 Comp. Gen. 553, paragraph 2-6.1e (FTR) (May 1973), does not state when an employee must make a request for an extension. In view of this and upon further consideration, we conclude that requiring the employee to request an extension of time within the maximum

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2-year period allowed for the sale and purchase of residences would be unnecessarily restrictive. Therefore, reimbursement is allowable for expenses incurred in the sale or purchase of a residence where the employee has not requested an extension of time before the expiration of the 2-year limitation period, provided that the sale or purchase itself is completed within 2 years after the date the employee reported for duty at his new official station.

In view of the above, we now hold that FTR paragraph 2-6.1e (May 1973) permits an agency to receive and approve a request for extension filed more than 2 years after the transfer, as long as the real estate transaction itself is completed within 2 years of the employee's transfer. Accordingly, 54 Comp. Gen. 553 is modified. Also, since the Department of the Army has recommended payment of Mr. Rakous' claim incident to the purchase of his residence at his new duty station, it is now allowed.

The case is returned to our Claims Division for preparation of a settlement for reimbursement of real estate expenses incurred by Mr. Rakous in purchasing a residence at his new official station to the extent otherwise proper.


Acting Comptroller General
of the United States