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DECISION



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

FILE: B-18989S

DATE: November 3, 1977

MATTER OF: Fred Kaczmarowski - Relocation Expenses -
House Sale

- DIGEST:**
1. Employee of Department of the Army was transferred from Milwaukee, Wisconsin, to Selfridge Air Force Base (AFB), Michigan, and then from Selfridge AFB to Huntsville, Alabama. He claims reimbursement of real estate expenses incident to sale of residence in Milwaukee. Employee is not entitled to reimbursement in connection with transfer to Huntsville because residence which was sold was not at old station and he did not regularly commute between Selfridge AFB and such residence. Also, he is not entitled to reimbursement in connection with transfer from Milwaukee to Selfridge since time limit for sale has expired.
 2. Employee did not move from Wisconsin to Michigan at the time of transfer to Selfridge AFB due to possible closing of base. Although employee saved Government expenses of two moves, he is not thereby entitled to reimbursement. Only exception to commuting requirement of regulations is where station is in remote area and adequate family housing is not available within a reasonable daily commuting time, and there is no indication that such housing did not exist at Selfridge AFB.

This is in response to an inquiry dated August 4, 1977, from Senator William Proxmire. That inquiry constitutes a request for reconsideration of our Claims Division's settlement of March 5, 1976, Certificate No. Z-2576814, by which Mr. Fred Kaczmarowski's claim for reimbursement of certain real estate expenses was denied.

The record shows that Mr. Kaczmarowski, an employee of the Department of the Army, was transferred from Milwaukee, Wisconsin, to Selfridge Air Force Base, Selfridge, Michigan, effective

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November 1, 1971. The orders issued in connection with that transfer authorized reimbursement of real estate expenses, but Mr. Kaczmarowski did not sell his home in Milwaukee or buy a new one near Selfridge. He decided not to move because when he reported for duty at Selfridge he was informed that the base might be closed. He therefore rented a room near Selfridge and returned to Milwaukee on weekends. Mr. Kaczmarowski reports that within a year after his transfer he was officially informed that Selfridge was to be closed and again decided that it would be unwise to move. He received a reduction-in-force notice sometime in early 1974, and was subsequently hired by the USA Missile Command at the Redstone Arsenal in Huntsville, Alabama, effective July 22, 1974. Reimbursement of real estate expenses was also authorized in connection with this transfer. Mr. Kaczmarowski sold his house in Wisconsin, bought another in Alabama, and applied for reimbursement of expenses he incurred as the result of those transactions. The Chief of the Legal Office at the Redstone Arsenal approved reimbursement of the expenses relating to the purchase of the new house but denied approval for reimbursement of those expenses relating to the sale of the home in Milwaukee. He determined that Mr. Kaczmarowski was not eligible for such reimbursement because the Milwaukee residence was not the one from which he regularly commuted to and from work. Our Claims Division upheld that determination.

Paragraph C8350 (charge 91, May 1, 1973), Vol. II of the Joint Travel Regulations (JTR), provides in pertinent part:

"1. GENERAL. An employee will be entitled to reimbursement for expenses required to be paid by him in connection with the sale of his residence at his old duty station; the purchase (including construction) of a residence at his new duty station; or in connection with the settlement of an unexpired lease involving his residence or a lot on which a mobile home used as his residence was located at his old duty station, after he had signed the required transportation agreement and provided that:

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- "6. the residence or dwelling is the residence (which may be a mobile home and the lot on which such mobile home is located or will be located) from which the employee regularly commutes to and from work, except that when the duty station is in a remote area where adequate family housing is not available within reasonable commuting distance, then a residence will be considered to include the dwelling where the dependents of the employee reside or will reside, but only if such residence reasonably relates to the permanent duty station as determined by the travel-approving official concerned."

This regulation is based on paragraph 2-6.1 of the Federal Travel Regulations (FTR) (May 1973), which are issued by the General Services Administration (GSA), and govern the entitlements of all civilian employees of the Federal Government. Paragraph 2-6.1 provides in pertinent part as follows:

"2-6.1. Conditions and requirements under which allowances are payable. To the extent allowable under this provision, the Government shall reimburse an employee for expenses required to be paid by him in connection with the sale of one residence at his old official station, for purchase (including construction) of one dwelling at his new official station, or for the settlement of an unexpired lease involving his residence or a lot on which a mobile home used as his residence was located at the old official station; Provided, That:

* * * * *

"b. Location and type of residence. The residence or dwelling is the residence as described in 2-1.4i, which may be a mobile home and/or the lot on which such mobile home is located or will be located."

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Paragraph 2-1.4 provides:

"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."

Issued pursuant to 5 U.S.C. 5724a (1970) which contains the authority for reimbursement of real estate expenses, these regulations have the force and effect of law and may not be waived by any department of the Government in an individual case.

Our Office has consistently held that where an employee returns to a residence only on weekends, such residence does not constitute "quarters from which the employee regularly commuted to and from work," pursuant to FTR section 2-1.4i. See Matter of Tony D. Limbaugh, B-188644, April 23, 1977; Matter of Nathaniel A. Wilson, B-161606, June 3, 1976. Since Mr. Kaczmarowski commuted to his home in Milwaukee only on weekends, that residence does not meet the conditions of the regulations authorizing reimbursement, and he is not entitled to receive the expenses he incurred in selling his home in Milwaukee.

Mr. Kaczmarowski states that he decided not to move from Milwaukee to Selfridge in order to avoid the difficulties associated with two moves. By not moving, he argues, he saved the Government the expense of an extra move and should not be penalized as a result.

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He also argues that he should not be denied reimbursement because he was not informed of the requirements of the applicable regulations.

Although Mr. Kaczmarowski did save the Government some expense, this fact does not affect his entitlement. The only exception to the commuting requirement of the regulations is where the official duty station is in a remote area where adequate family housing is not available within a reasonable daily commuting time. See 47 Comp. Gen. 109 (1967). This exception has been incorporated into the regulations in paragraph 2-1.41 of the FTR and paragraph C8350-1.6 of the JTR, supra. There is no indication that housing was not available near the Selfridge base because it was in a remote area.

We recognize that Mr. Kaczmarowski was authorized to sell his home in Milwaukee in connection with his transfer to Selfridge. However, FTR para. 2-6.1e provides that the settlement date for the sale of the home at the old station must be not later than 1 initial year after the effective date of the transfer. Also, an additional extension of the time limit may be granted upon the written application of the employee. In the present case the record shows that the effective date of Mr. Kaczmarowski's transfer was November 1, 1971. The settlement date for the sale of his Milwaukee home was August 16, 1974. Since Mr. Kaczmarowski did not consummate settlement within 2 years of his transfer to Selfridge, the maximum time limit for selling a home, he may not be reimbursed the sale expenses in connection with his transfer from Milwaukee.

With respect to Mr. Kaczmarowski's contention that he was not informed concerning the requirements of the regulations and should therefore be reimbursed, it is well established that in absence of specific statutory authority, the United States is not liable for negligent or erroneous acts of its officers, agents, or employees, even though committed in the performance of their official duties. Robertson v. Sichel, 127 U.S. 507, 513 (1888); German Bank v. United States, 148 U.S. 573, 579 (1893); 19 Comp. Gen. 503 (1939); 22 id. 221 (1942); 44 id. 337 (1954); and 46 id. 348 (1966).

In light of the foregoing we must affirm our Claims Division's determination that Mr. Kaczmarowski is not entitled to reimbursement.


Acting Comptroller General
of the United States

UNITED STATES GOVERNMENT

J. R. Taylor
GENERAL ACCOUNTING OFFICE *C.P.*

Memorandum

TO : Director, Claims Division

November 3, 1977

Acting
FROM : Comptroller General *Phyllis K. ...*

SUBJECT: Claim for reimbursement of real estate expenses - B-189898-O.M.

Returned herewith is file Z-2576814 along with a copy of our decision of today, B-189898, sustaining your settlement of March 5, 1976.

Attachments



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

J. P. ...
CP

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November 3, 1977

The Honorable William Proxmire
United States Senate

Dear Senator Proxmire:

Reference is made to your letter of August 4, 1977, concerning the claim of Mr. Fred Kaczmarowski, an employee of the Department of the Army, for reimbursement of real estate expenses incurred in connection with a change of official duty station.

By decision of today, copy enclosed, we held that, in accordance with the regulations which govern his situation, Mr. Kaczmarowski is not entitled to reimbursement. The enclosures forwarded with your letter are returned as requested.

Sincerely yours,

Acting

Phyllis K...
Comptroller General
of the United States

Enclosures