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Wagner
Civ. Pen.

DECISION



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

FILE: B-190981

DATE: April 6, 1978

MATTER OF: Judson W. Hand -- Claim for Real Estate Expenses

DIGEST: Employee, who was transferred from Washington, D.C., to Albany, Georgia, claims expenses incurred in sale of family residence located in Alabama. Employee may not be reimbursed since under Federal Travel Regulations residence must be the one from which employee commutes regularly to and from work. Furthermore, Government is not bound by unauthorized or incorrect statements of its agents or employees.

This action is in response to a request for an advance decision from O. J. Toland, a Disbursing Officer at the Marine Corps Logistics Support Base, Atlantic, U.S. Marine Corps, reference A430:OJT:srt 4650, concerning the claim of Mr. Judson W. Hand, Sr., an employee of the U.S. Marine Corps, for reimbursement of real estate expenses incurred pursuant to a change of official duty station. The request for an advance decision including the voucher claiming reimbursement was forwarded to this Office by the Per Diem. Travel and Transportation Allowance Committee and was assigned PDTATAC Control No. 77-38.

Mr. Hand states in a letter dated November 7, 1977, that he accepted a position with the Naval Personnel Program Support Activity in Washington, D.C., and that since he was advised this activity would be moving to New Orleans, Louisiana, he decided not to move his family from their residence in Wetumpka, Alabama, to Washington. When he learned that the Naval activity would not be moving to New Orleans, Mr. Hand states he obtained a position with the Marine Corps Logistics Support Base, Atlantic, in Albany, Georgia, and was transferred effective April 29, 1976. Mr. Hand states further that he was advised by the Marine Corps Civilian Personnel Office in Albany, Georgia, that he would be entitled to reimbursement for real estate expenses incurred in the sale of his residence in Wetumpka, Alabama, where his family resided. However, the agency questions whether Mr. Hand may be reimbursed for the sale of a dwelling which was not his actual residence at the time of his transfer.

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The authority for reimbursement of real estate expenses incurred by an employee pursuant to a transfer of official duty station is contained in 5 U.S.C. § 5724a (1976) and the implementing regulations, the Federal Travel Regulations (FTR) (FPMR 101-7) (May 1973). Under the statute and regulations, an employee may be authorized reimbursement for expenses incurred in the sale of a residence at the old official duty station, when incident to a transfer, but the "official station" is defined in para. 2-1.4i of the FTR as the residence or other quarters from which the employee regularly commutes to and from work. See also para. C8350 (change 1.25, March 1, 1976), Joint Travel Regulations, Vol. II. The only exception to this requirement involves cases in which an employee is assigned to a remote area where family housing is unavailable.

Based on the record before us, it appears that Mr. Hand did not regularly commute between Washington, D.C., and Wetumpka, Alabama, except perhaps on weekends. Therefore, since his residence does not meet the conditions set forth in the regulations authorizing reimbursement, Mr. Hand may not be reimbursed for the expenses he incurred in selling his residence in Alabama. See Fred Kaczmarowski, B-189898, November 3, 1977, and decisions cited therein.

It is unfortunate that Mr. Hand was erroneously advised by an official of the Marine Corps that he would be entitled to reimbursement of real estate expenses incurred in the sale of his Alabama residence, but it is a well-settled rule of law that the Government cannot be bound by the unauthorized or incorrect statements of its agents or employees. See Elton L. Smalley, B-181311, August 21, 1974, and court cases cited therein. In addition, the regulations governing reimbursement for real estate expenses have the force and effect of law and may not be waived or modified by any department or agency of the Government in an individual case.

Accordingly, the voucher may not be certified for payment.


Acting Comptroller General
of the United States