

DOCUMENT RESUME

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[Real Estate Expenses upon Transfer of Station]. B-191478.
December 7, 1978. 3 pp.

Decision re: Warren G. Martin; by Robert F. Keller, Acting
Comptroller General.

Contact: Office of the General Counsel: Personnel Law Matters I.
Organization Concerned: Department of the Army; Department of
Energy.

Authority: 51 Stat. 397; H.J. Res. 233 (80th Cong.). 5 U.S.C.
5724a. F.T.R. (PPHR 101-7). B-172594 (1974). B-187045
(1977). B-164043 (1968). B-188657 (1977). B. Rept. 80-89.

A decision was requested as to whether an employee who transferred from one agency to another was entitled to reimbursement of real estate expenses for the sale of his residence incident to his transfer. Even though the employee did not occupy the residence he sold when he was notified of the transfer, it was his home of record and prior tours of service satisfied occupancy requirements. The employee may be reimbursed for expenses incident to his transfer. (RHS)

DEVISION



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

For
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8566

FILE: B-191478

DATE: December 7, 1978

MATTER OF: Warren G. Martin - Real Estate Expenses Upon
Transfer of Station

DIGEST: Army employee, stationed at Kwajalein, Marshall Islands, was reassigned to Huntsville, Alabama, incident to exercise of reemployment rights. While stationed at Kwajalein he was selected by Department of Energy for position in Oak Ridge, Tennessee. He returned to Huntsville on reassignment and occupied residence there. Thereafter he transferred to Oak Ridge and sold residence. Although employee did not physically occupy residence at Huntsville when first advised of transfer, he may be reimbursed expenses because under the circumstances he satisfied occupancy requirements of FTR para. 2-6.1c.

This action is in response to a letter dated March 29, 1978, from Ms. B. B. Hensley, an authorized certifying officer of the Department of Energy (DOE), requesting a decision as to whether Warren G. Martin, an employee of DOE, is entitled to reimbursement of real estate expenses incident to the sale of his residence upon his transfer from the Department of the Army to DOE.

Mr. Martin was stationed with the Army at Kwajalein, Marshall Islands. While he was on leave in Huntsville, Alabama, his actual residence in the United States, he was interviewed and orally offered a position with DOE at Oak Ridge, Tennessee, on June 28, 1977. A formal confirmation of the offer was mailed to his overseas station on July 1, 1977. The appointment was subject to the granting of a security clearance to Mr. Martin which was expected to occur in late August 1977. On July 8, 1977, DOE advised the Army of Mr. Martin's prospective transfer in September 1977. On July 15, 1977, Mr. Martin signed an employment agreement with DOE and a request for an advance of funds. Mr. Martin, who had returned to the Marshall Islands, left Kwajalein on August 10, 1977, for Huntsville under Army orders dated March 24, 1977. Army Standard Form 50, dated August 22, 1977, indicates that Mr. Martin was reassigned to Huntsville, effective August 26, 1977, incident to his exercise of reemployment rights. His transfer from Huntsville to Oak Ridge was effective September 24, 1977. The issue is whether Mr. Martin

B-191478

is entitled to reimbursement of real estate expenses incurred in the sale of his residence at Huntsville under such circumstances.

Section 5724a(a)(4) of title 5, United States Code (1976), permits an agency to pay the expenses of the sale of the residence of a transferred employee at the old station and purchase of a home at the new station, but only when both the old and new stations are located in the United States, its Territories or possessions, the Commonwealth of Puerto Rico, or the Canal Zone. Paragraph 2-6.1d of the Federal Travel Regulations (FTR) (FPMR 101-7) (May 1973) provides that the dwelling for which reimbursement of selling expenses is claimed must have been the employee's residence at the time he was first definitely informed by competent authority of his transfer to the new official station. Paragraph 2-6.1a of the FTR states that the transfers covered are those between the geographical locations set forth in 5 U.S.C. 5724(a)(4). The authorized certifying officer questions the propriety of reimbursement of expenses incident to the sale of Mr. Martin's residence in light of Transfer From Overseas to United States, B-172594, March 27, 1974; and Stanley N. Hirsch, B-187045, August 3, 1977.

In Transfer From Overseas to United States, *supra*, we held that two Army employees stationed in Saigon, Vietnam, could not be reimbursed for real estate expenses under 5 U.S.C. 5724a(a)(4) if they were transferred from Saigon to their respective places of residence in the United States and shortly thereafter transferred by the Army to Washington, D.C. In Hirsch, *supra*, the employee was detailed to an assignment away from his headquarters with advice that there was a possibility that the 30-day detail might mature into a permanent transfer. Prior to the detail the agency had prepared a memorandum requesting the establishment of a higher grade position at the detail location and expressing an intention of transferring Mr. Hirsch to the position. We held that Mr. Hirsch was entitled to reimbursement of expenses of purchasing a residence at the detail location, although such expenses were incurred prior to a formal transfer, since they were incurred after he was definitely advised that he was to be transferred while he was at his former duty station.

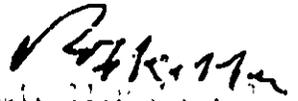
The Marshall Islands do not constitute a territory or possession of the United States but are administered under the trusteeship of the United States as established by the United Nations. See H. J. Res. 233, July 18, 1947, 61 Stat. 397; and H. Rep. No.

B-191478

889, 80th Cong., 1st Sess. 2 (1947). Therefore, if the Army had determined, prior to Mr. Martin's reassignment to Huntsville, that he was to be transferred shortly thereafter to another Army installation in the conterminous United States, reimbursement of expenses incident to the sale of his residence would have been precluded by Transfer From Overseas to United States, supra. However, the record does not show that such a determination was made. Rather, the Army reassigned him to Huntsville permanently incident to his exercise of his reemployment rights and paid the expenses thereof. Approximately 1 month later a second agency, DOE, appointed him without a break in service to a position at Oak Ridge. Therefore, Transfer From Overseas to United States is not applicable.

As stated above, FTR para. 2-6.1 provides that the dwelling for which reimbursement of selling expenses is claimed must have been the employee's residence at the time he was first definitely informed by competent authority of his transfer to the new official station. Mr. Martin was stationed in Kwajalein and, therefore, did not physically occupy his residence in Huntsville when he was first definitely advised by competent authority of his transfer to Oak Ridge. However, the record shows that Huntsville was his actual residence in the United States while he served two 2-year tours of service abroad under transportation agreements which obligated the Army to return him to his place of actual residence at the time of assignment to duty outside the United States. Pursuant to his last overseas service agreement the Army issued orders in March 1977 authorizing Mr. Martin's return travel and the transportation of his dependents and household goods to Huntsville. In accordance with that authorization Mr. Martin returned to the United States, and at the time of his transfer to DOE he was living in his residence in Huntsville. In these circumstances, we conclude that the employee has satisfied the occupancy requirements of FTR para. 2-6.1d. See B-164043, May 28, 1968, and B-188657, December 30, 1977.

In view of the above Mr. Martin is entitled to reimbursement of the expenses incident to his transfer from Huntsville to Oak Ridge, including costs of the sale of his residence in Huntsville, Alabama, if his claim is otherwise proper.


Assistant Secretary
of the United States

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