

DECISION



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

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FILE: B-191445

DATE: January 8, 1979

MATTER OF: Joseph L. White - [Expenses of Sale
of Residence in Anticipation of Transfer]

- DIGEST: 1. Residence selling expenses in anticipation of transfer from Hawaii may be reimbursed where illness of employee's wife did not permit her to continue to live in Hawaii. There was a compelling reason for the transfer in the Government's interest at the time the expenses were incurred, and travel orders based on this compelling reason were subsequently issued authorizing expenses. Accordingly, there was substantial compliance with requirement that there be an administrative intention to transfer the employee when the real estate expenses are incurred. James A. Colyer, B-182840, February 18, 1975, modified.
2. Entitlement to reimbursement for sale of residence incident to a transfer requires (under para. C14000.1-1 of 2 JTR and para. 2-6.1 of FTR) that it be the employee's actual residence when he is first definitely notified of the transfer. There was substantial compliance where illness of the employee's wife required living in an apartment pending notice of a transfer and where the employee had not entirely vacated the house before the transfer notice. Reimbursement for sales expense is allowable but subject to deduction of any previous reimbursement for lease termination expenses.

This decision responds to a request submitted by John D. Graham, Chief, Accounting and Finance Division, Defense Property Disposal Service, Defense Logistics Agency, Department of Defense, concerning the claim of Mr. Joseph L. White for reimbursement of real estate expenses in the amount of \$1,632.95. The matter was forwarded to our Office by the Per Diem, Travel and Transportation Allowance Committee, PDTATAC Control No. 78-11.

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B-191445

The issue is whether Mr. White may be reimbursed for the expenses of selling his house when prior to actual notice of the transfer Mr. White had entered into the contract of sale, had incurred selling expenses, and had moved with his wife into an apartment.

Mr. White, a civilian employee of the Defense Logistics Agency, was transferred to Honolulu, Hawaii, in November 1975. He purchased a house in Honolulu in February 1976. His wife became seriously ill, and Army medical officers at Hickam Air Force Base determined, during March 1976 or shortly thereafter, that the environment in Hawaii was destructive to her health. Mr. White made plans to return to the mainland and entered into a contract for the sale of his residence on May 24, 1976. He received oral notice on July 6, 1976, that he would be transferred to the mainland. He received formal written travel orders changing his permanent duty station to Battle Creek, Michigan, on July 20, 1976, and, because of his wife's illness, he was released on that date from his commitment to serve 3 years in Hawaii.

Settlement day for closing the sale and transferring ownership of his Honolulu residence was July 23, 1976. However, Mr. White had moved from his house to an apartment in Honolulu on about June 21, 1976. The move was required because of his wife's illness. Living in the apartment was temporary until he could close the sale of his residence in Honolulu and return to the mainland. Although he and his wife lived in the apartment, he did not fully vacate his residence until July 15, 1976. They evidently remained in the apartment until August 12, 1976, when they departed from Hawaii.

The file contains a receipt dated May 7, 1976, showing Mr. White's payment of \$550 to a realtor as a portion of his broker's fee or commission evidently for services performed by May 24, 1976, when the buyer signed a sales contract to purchase the residence. The file also includes the sales contract which provided for an additional \$700 brokerage fee for services rendered, evidently before May 24, 1976.

The Defense Property Disposal Service disallowed the sales expenses because the contract of sale was signed before the employee was notified of the transfer. An additional reason for the disallowance was that Mr. White had moved into an apartment prior to being notified of his transfer.

B-191445

By memorandum of February 24, 1978, Headquarters, Defense Logistics Agency, recommended reimbursement to Mr. White for expenses incurred for the sale of his residence in Honolulu. Two reasons are given in support of the recommendation. First, although Mr. White had contracted for the sale of his residence before he received formal notice of his transfer, we held in James A. Colyer, B-182840, February 18, 1975, that this circumstance does not disqualify a civilian employee from entitlement to reimbursement. Second, Mr. White apparently satisfied the condition for entitlement in paragraph C14000.1-1, Volume 2 of the Joint Travel Regulations (JTR), that the dwelling must be the actual residence of the employee when he is first definitely informed of the transfer.

We agree that a contract to sell a residence before definite notice of a transfer does not in itself disqualify an employee from reimbursement for relocation expenses incurred in the sale or purchase of a residence. See 48 Comp. Gen. 395 (1968).

However, this decision announced a limitation concerning the time the employee incurs real estate expenses in anticipation of his transfer. It held that reimbursement is authorized only if there is an administrative intention to transfer the employee clearly evident at the time the real estate expenses were incurred. See also 52 Comp. Gen. 8 (1972); 53 id. 836 (1974); 54 id. 993 (1975); and 57 id. 447 (1978). In recent cases, reimbursement has been denied when there was no clear evidence of an administrative intention to transfer the employee at the time the real estate expenses were incurred and the employing agency does not find that the sale or purchase of the residence was incident to the transfer. Further, agencies have broad discretion in deciding whether the sale or purchase was incident to the transfer. Samuel V. Britt, B-186763, October 6, 1976; G. F. McBride, B-187088, February 3, 1977; Joan E. Marci, B-188301, August 16, 1977.

James A. Colyer, supra, conflicts with the decisions discussed above. In Colyer it was stated that for long-distance transfers there was no need for a finding that the sale is incident to the transfer and that the only requirement was the employee's occupancy of the residence when there is notice of the transfer, even though the selling expenses were incurred before the employee anticipated a transfer. Colyer is, therefore, modified to the extent it is inconsistent with the above cases.

B-191445

When Mr. White incurred the real estate expenses, there were compelling reasons in the Government's interest for a transfer and these reasons were the basis for subsequently issuing travel orders approving the real estate expenses. Where such a compelling reason leads the employee to believe he will be transferred and he actually is transferred, we have held that there is substantial compliance with the requirement for a clearly evident intention to transfer him. See B-170800, December 22, 1970.

We find that the reasons for the transfer in this case were compelling when military doctors determined that Mrs. White could not continue to live in Hawaii. The alternative to a transfer was Mr. White's separation from the service and return to his former residence in the continental United States at Government expense. Serious illness in the employee's immediate family, when found to exist by a responsible command official and verified by a physician, is an adequate reason for release from the employee's 3-year commitment to serve overseas. Paragraph C4009-2b of 2 JTR.

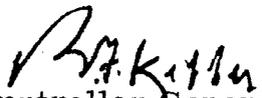
We conclude that the military doctors' finding that Mrs. White could not live in Hawaii constituted substantial compliance with the requirement that there be a clearly evident intention to transfer at the time real estate expenses are incurred.

The final question in this case is whether the residence sold in Hawaii was Mr. White's actual residence when he was first definitely informed of the transfer as required by paragraph C14000. 1-1 of 2 JTR and paragraph 2-6.1 of FTR. It is to be noted that because of Mrs. White's illness Mr. and Mrs. White had lived in an apartment since approximately June 21, 1976, when Mr. White was orally informed on July 6, 1976, that he would be transferred. Since living in the apartment was required because of Mrs. White's illness and was only temporary pending reassignment, there was substantial compliance with the residence requirement. Jesse A. Greer, B-189122, November 7, 1977. Also, the administrative report indicates that the residence to be sold was not entirely vacated until after definite notice of the transfer. Consequently, reimbursement is not prohibited because of temporarily living in the apartment.

Reimbursement of the selling expenses may be paid, subject to deduction for any amount already reimbursed for expenses incurred to terminate the apartment lease. Reimbursement of expenses for

B-191445

only one residence transaction at the old official station is permitted.
B-177343, March 7, 1973.


Deputy Comptroller General
of the United States