

**DECISION**



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

13293 PLME

FILE: B-194423

AGC00305

DATE: March 31, 1980

Reimbursement

MATTER OF: Army Corps of Engineers - Employees'  
Real Estate Expenses - Transfers from  
Overseas Duty Station

**DIGEST:**

Employees of Corps of Engineers, Department of Army, who transferred from overseas post in Livorno, Italy, to Berryville, Virginia are not entitled to reimbursement of real estate expenses since both stations are not in United States as required by 5 U.S.C. § 5724a(a)(4). Claimants, as Federal employees, are not entitled to reimbursement of such expenses regardless of fact that agency has funds from foreign government to make such payments. Erroneous advice by Government officials provides no basis for payment.

The principal issue here is whether an employee who is transferred by an agency from an overseas duty station to a duty station in the United States, other than the one from which he was transferred abroad may be reimbursed for expenses incurred in selling his old residence or buying a new residence, or both.

A request for an advance decision by the Middle East Division Disbursing Office, Corps of Engineers, Department of the Army, forwarded to this Office by the Chief Counsel, Office of the Chief of Engineers, concerns the claims of approximately 50 employees of the United States Army Corps of Engineers for reimbursement of real estate expenses incurred by the employees incident to a mass transfer from Livorno, Italy, to Berryville, Virginia, in 1976.

AGC 00648

BACKGROUND

The facts and circumstances involved in the claims, as reported by the agency, may be summarized as follows: The United States and Saudi Arabia entered into an international agreement in 1965 providing that the Corps of Engineers would provide engineering assistance to the Saudi Arabian Ministry

009455

111950

B-194423

of Defense and Aviation. The Division Engineer of the Mediterranean Division at Leghorn, Italy, was to provide needed services and full funding was to be provided by the Saudi Arabian Government. In late 1975, due to the extensive growth of the assistance program, it was determined that, in order to efficiently provide the quality and quantity of services required, the construction elements would be relocated in Saudi Arabia and the engineering elements would be relocated in Berryville, Virginia.

Personnel in the engineering elements were seriously concerned with transferring directly to Berryville, and particularly with the reimbursement of the expenses they would incur in selling their residences at their old duty stations and purchasing new residences at Berryville. Approximately 50 employees agreed to continue with the program in Berryville but indicated that they did not desire to transfer directly to Berryville unless they were reimbursed for the real estate expenses they would incur. In order to maintain the continuity of the program, high-level officials of the Corps of Engineers assured the employees that their problems "would be taken care of." Acting in good faith and relying upon these assurances, the employees agreed to transfer directly to Berryville in order to avoid disruption of the program. As a result, contrary to prior assurances of favorable treatment, many employees suffered considerable financial losses, principally because reimbursement of real estate expenses was not allowed.

The administrative report further states that about 20 employees listed selling expenses amounting cumulatively to approximately \$65,000, and about 27 employees listed purchase expenses aggregating approximately \$30,000. Several of the transferred employees stated that they were unable or unwilling to sell their houses at their old duty stations or buy houses at Berryville unless their real estate expenses were reimbursed. The specific issue, as stated in the administrative report, is whether the employees transferred from Italy to Berryville, who had previously transferred to Italy from another permanent duty station in the continental United States, are entitled to reimbursement of their real estate expenses.

STATUTE AND REGULATIONS

Section 23 of Public Law 89-516, 80 Stat. 323, July 21, 1966 now codified in 5 U.S.C. § 5724a (1976), authorizes reimbursement of certain expenses associated with the sale or purchase of a residence incident to an employee's transfer of official station. In pertinent part 5 U.S.C. § 5724a reads as follows:

"(a) \* \* \* appropriations or other funds available to an agency for administrative expenses are available for the reimbursement of all or part of the following expenses of an employee for whom the Government pays expenses of travel and transportation under section 5724(a) of this title:

\* \* \* \* \*

"(4) Expenses of the sale of the residence \* \* \* of the employee at the old station and purchase of a home at the new official station required to be paid by him when the old and new official stations are located within the United States, its territories or possessions, the Commonwealth of Puerto Rico, or the Canal Zone. \* \* \*" (Underscoring supplied.)

Paragraph 2-6.1 of the Federal Travel Regulations (FTR) (~~FPMR 101~~, May 1973), provides as follows:

"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 \* \* \* Provided, that:

"a. \* \* \* A permanent change of station is authorized or approved and the old and new official stations are located within the 50 States, the District of Columbia, the territories and

possessions of the United States, the Common  
wealth of Puerto Rico, or the Canal Zone \* \* \*."  
(Underscoring supplied.)

Consistent with the limiting language of this section, paragraph C14000-1 of the Joint Travel Regulations, Volume 2, prohibits such payments to employees transferred from a duty post outside the United States.

#### DISCUSSION

The Department of the Army has recommended that the claims for reimbursement of real estate expenses be allowed. The agency points out that where Congress intended that reimbursement be contingent on both the old and new duty stations being in the United States, the word "both" was included in the statute. It believes that if Congress had intended that reimbursement of real estate expenses incurred for either the sale or purchase of a residence be contingent on both old and new official stations being in the United States, the word "both" would have been included in section 5724a of Title 5, United States Code. The Army contends that, by reading the word "both" into subsection 4, where it does not appear, the prior interpretations of section 5724a by this Office have added a restriction not intended by the Congress.

The Department of the Army also points out that, under 10 U.S.C. § 1586, a program has been established within the Department of Defense (DOD) for the benefit of personnel transferring overseas whereby such employees have a right to return to their old position after satisfactory completion of their overseas tour of duty. Under usual conditions, an employee who transfers overseas with reemployment rights at his old station is not affected by the lack of real estate benefits. However, problems arise in the occasional cases where a transfer of function occurs while an employee is overseas. In those cases, the employee usually transfers with his position to the new duty station in the continental United States rather than returning to his old official station, and he is not reimbursed for real estate expenses incurred at either station. The agency contends that such a rule discourages employees from transferring overseas and thus is contrary to Congressional and DOD policy. The Chief Counsel proposes that the old official station in the continental United States, at which the employee has

B-194423

reemployment rights, be treated as a constructive permanent duty station for purposes of reimbursement of real estate expenses only. Thus, for purposes of real estate expense reimbursement, the employee would be deemed to have never left his old duty station in the United States.

This Office has consistently held that 5 U.S.C. 5724a requires that both the old and the new duty stations be located within the areas listed. 54 Comp. Gen. 1006 (1975); 47 *id.* 93 (1967). The rationale in support of our holdings has been restated in a recent decision of this Office, Terence R. St. Louis, B-188414, July 11, 1977, as follows:

"In our view the congressional mandate is clear. When the Congress desired to make the expense reimbursable if only the new station is required to be located in the United States ( and other named places) the law so stated as in connection with the allowance for subsistence expenses for temporary quarters contained in subsection 5724a(a)(3). However, when both the old and new stations were required to be located in the continental United States or the United States (and other specifically named places) the law spelled out this requirement as in the subsections dealing with locating a residence and expenses in connection with the sale or purchase of a home, subsection 5724a(a)(2) and 5724a(a)(4), respectively. B-169696, June 2, 1970."

Also see B-161815, July 6, 1972, which discusses and elaborates on the rationale of 47 Comp. Gen. 93, supra.

The requirement that the old and the new duty stations be located in the United States and the other areas listed is controlling even when the travel order shows the employee is to be assigned to a second station within the United States upon completion of the overseas tour of duty. Hugh C. Miller, B-182002, May 29, 1975. The fact that an employee has been unable to take his immediate family with him on the overseas tour of duty does not change the requirement. B-169696, June 2, 1970. Nor can the requirement be circumvented by a

B-194423

short tour of duty at the old duty station in the United States between the overseas tour and the final duty station. B-172594, March 27, 1974.

The sole basis for the payment of expenses incurred incident to the sale and purchase of a residence is that provided by statute. Congress, in enacting the law, has limited its application to those cases where the old and the new official stations are located within the United States or other named locations, and this Office may not, by interpretation, extend its application to include situations involving transfers from or to official stations located in foreign countries. St. Louis, supra.

We have been advised by officials of the Corps of Engineers, Department of the Army, that the agency is in possession of funds received from the Saudi Arabian Government under the international agreement from which the claimed real estate expenses may be paid. The question therefore arises whether such claims may be paid by the Department, not from appropriated funds, but from funds received from a foreign nation under an international agreement. The answer is in the negative. Section 5724a of Title 5, United States Code, provides that "appropriations or other funds available to an agency for administrative expenses" are available for the reimbursement of real estate expenses when the old and new official stations are located within the United States and other named locations. The statutory language "other funds available to an agency for administrative expenses" might be construed to include the funds received from the Saudi Arabian Government. However, this would not enlarge the entitlement of the claimants in the instant case.

A similar contention was made by a Federal employee in Robert V. Linderman, B-191121, March 20, 1979. Mr. Linderman argued that since his agency was reimbursed by the Trust Territories of the Pacific Islands for all expenses of his transfer to Saipan, there was no need to collect back the real estate expenses paid to him. We disagreed since Mr. Linderman's entitlement as a Federal employee to relocation expenses was based upon the statutes and regulations governing real estate expenses. In an earlier case, we held that the right of Federal officials on American

B-194423

Samoa to travel expenses was no different than the entitlements of other Federal employees, regardless of the funds from which these expenses are paid. 54 Comp. Gen. 260, 262 (1974).

Further, we have held in cases involving factual situations similar to the case at bar that such claims are not for reporting to the Congress by the General Accounting Office under the provisions of the Meritorious Claims Act, 31 U.S.C § 236 (1976). Linderman, supra., William E. Weir, B-189900, January 3, 1978. Also, even though the claimants here may have relied upon the alleged assurances of agency officials that their problems (relating to reimbursement of real estate expenses) "would be taken care of," the United States Government cannot be bound by the unauthorized or incorrect statements of its agents. Linderman, B-191121, November 24, 1978.

#### Conclusion

In light of the foregoing, reimbursement of the real estate expenses incurred by the claimants incident to the mass transfer of personnel of the Corps of Engineers from Livorno to Berryville may not be authorized.

However, in view of the unduly harsh and severe adverse financial impact of the statutory provision on the approximately 50 employees in the case presently before us and other Federal employees similarly situated, we are recommending to the Congress of the United States that section 5724a(a)(4) of title 5, United States Code, be amended to allow reimbursement of real estate expenses to Federal employees who, upon completion of an overseas tour of duty, are reassigned to duty stations in the United States other than the ones from which they were transferred to the overseas posts of duty.

  
Comptroller General  
of the United States