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DECISION



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

FILE: B-197501

DATE: May 12, 1980

MATTER OF: Jerry O. Hays ^{Request for} Reimbursement for Real Estate Expenses

- DIGEST:**
1. Employee claims reimbursement for real estate expenses incurred incident to sale of residence in Valdosta, Georgia, upon transfer from Augusta to Albany, Georgia. Employee commuted from local residence to duty station in Augusta and traveled 224 miles to family residence in Valdosta on weekends and holidays. Employee is not entitled to reimbursement since Federal Travel Regulations require that residence be the one from which employee commutes regularly to and from work.
 2. Employee transferred from Valdosta, Georgia, to Augusta, Georgia, in 1975, and then to Albany, Georgia, in 1976. He is not entitled to reimbursement under 1975 travel order since he did not sell Valdosta residence within 2 years of transfer to Augusta as required by Federal Travel Regulations.

This decision is in response to an appeal by Mr. Jerry O. Hays of our Claims Division settlement of August 9, 1979, which disallowed his claim for reimbursement of real estate expenses incurred incident to a permanent change of station. For the reasons stated below we sustain the Claims Division's determination.

Mr. Hays, an employee of the Federal Aviation Agency (FAA), was transferred from Valdosta, Georgia, to Augusta, Georgia, with a reporting date of August 4, 1975. Mr. Hays' travel orders stated that his family would travel at a later date and that transportation of his dependents and household effects should be completed by August 4, 1977. The orders also provided for real estate expenses.

Mr. Hays was subsequently transferred by the FAA on September 27, 1976, from Augusta to Albany, Georgia, his present duty station. His travel orders stated that: "Sale of residence will be handled under extension of previous travel order."

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The orders were so annotated because Mr. Hays requested and was granted a 1-year extension to September 2, 1977, to enable him to sell his residence. The FAA granted the extension because it was decided that the transaction was related to his transfer to Albany. A further extension was also granted by FAA not to exceed September 25, 1978. Mr. Hays purchased a home in Albany and settled on his home in Valdosta on May 25, 1978.

Mr. Hays' claim for \$3,399.90 incident to the sale was denied by the FAA because the home in Valdosta was not the residence from which he commuted to work at the time of his transfer from Augusta to Albany. Mr. Hays resided in Augusta during the week and commuted to Valdosta, a distance of 224 miles, on weekends and holidays. Mr. Hays says that he was granted the extensions he requested and that now his claim is being denied on an unrelated commuting factor.

The reimbursement of Federal employees for residence transactions is provided for by statute. 5 U.S.C. § 5724a(4) (1976). The cited provision provides reimbursement for the expenses of the sale of the residence of the employee at the old station and purchase of a home at the new official station when the old and new official stations are located within the United States. The Federal Travel Regulations, issued pursuant to the statutory authority (FTR) (FPMR 101-7) (May 1973), defines the employee's official station in paragraph 2-1.4i in part as follows:

"* * * 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."

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The language of this regulation is clear and unambiguous. It authorizes reimbursement for the expenses of residence transactions incident to a transfer involving a residence "from which the employee regularly commutes to and from work" and limits the exception to this requirement to those cases in which an employee is assigned to a remote area where family housing is unavailable. Jacques P. Evans, B-196471, January 16, 1980; Robert C. Kelly, B-189998, March 22, 1978; Robert C. Denz, B-185669, September 29, 1976. Mr. Hays' Valdosta residence was not the one from which he commuted to work while in Augusta, and Augusta is not a remote work area. Mr. Hays, therefore, may not be reimbursed for the Valdosta sales expenses under the orders transferring him from Augusta to Albany.

Mr. Hays would also not be eligible for reimbursement for the sales expenses under the orders transferring him from Valdosta to Augusta. The FTR provides in paragraph 2-6.1e that:

"e. Time limitation. The settlement dates for the sale and purchase or lease termination transactions for which reimbursement is requested are not later than 1 (initial) year after the date on which the employee reported for duty at the new official station. Upon an employee's written request this time limit for completion of the sale and purchase or lease termination transaction may be extended by the head of the agency or his designee for an additional period of time, not to exceed 1 year, regardless of the reasons therefor so long as it is determined that the particular residence transaction is reasonably related to the transfer of official station."

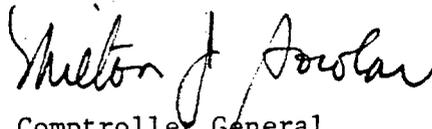
Mr. Hays was transferred to Augusta from Valdosta on August 4, 1975, and sold his residence in Valdosta on May 25, 1978. Since he did not sell his Valdosta residence within 2 years of his transfer to Augusta, he is not entitled to reimbursement for real estate expenses under his 1975 travel order. Alister L. McCoy, B-195556, February 19, 1980; Joseph Marcheggiani, B-161795, December 18, 1978.

It is unfortunate that the FAA granted Mr. Hays several extensions and did not raise the "official duty station" issue,

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thereby leading him to believe he would be reimbursed. However, the regulations issued pursuant to 5 U.S.C. § 5724a (1976), have the force and effect of law, and may not be waived by any department of the Government in an individual case. Alister L. McCoy, supra; Anthony J. Drexelius, B-188400, June 10, 1977; Ralph F. Mendenhall, B-188496, July 29, 1977.

Accordingly, the Claims Division settlement of August 9, 1979, is sustained.



For The Comptroller General
of the United States