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DECISION



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

FILE: B-199316

DATE: August 29, 1980

MATTER OF: Defense Mapping Agency - Claims for Real Estate Expenses of Employees Transferred from Panama

DIGEST: Employees who transferred to Panama for period of 2 to 5 years chose not to sell former residence in United States in expectation of returning to former positions. Where function was transferred from Panama to Texas, employees may not be reimbursed for sales of former U.S. residences made more than 2 years from date of transfer to Panama. Transfer to Panama and transfer from Panama to Texas are separate transfers with separate entitlements to relocation expenses and may not be treated as one transfer. Reimbursement is not provided under Panama Canal Treaty or Panama Canal Act of 1979, Pub. L. 96-70.

This decision is in response to a request from George D. Boale, Director of Personnel, Defense Mapping Agency (DMA), concerning the [entitlement of certain DMA employees to reimbursement of real estate expenses] incident to their transfer from Panama to Texas. The issue presented is whether these employees may be reimbursed for the sale of their former residences in the United States made more than 2 years after their transfer to Panama.

The request from DMA states that as a result of the implementation of the Panama Canal Treaty, DMA will relocate the Headquarters, Inter American Geodetic Survey (IAGS) from Panama to Fort Sam Houston, San Antonio, Texas. The agency requested guidance from the Per Diem, Travel and Transportation Allowance Committee (PDTATAC) on the entitlement of IAGS employees, who occupied Government quarters in the Canal Zone and maintained permanent residences at their old United States duty stations, to sell their former residences upon transfer to Texas. The response from PDTATAC was that upon transfer to Panama, the employees had 2 years in which to sell their residences at their former duty stations and that beyond the 2-year period there is no entitlement to real estate expenses in connection with the sale of a residence at the former duty station, citing our decision in B-189898, November 3, 1977.

The Personnel Officer, IAGS, distinguishes this situation from the facts presented in our decision B-189898, supra, which involved a transfer between 2 duty stations within the continental United States.

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In the present case the IAGS employees who transferred to Panama were limited to tours of duty between 2 and 5 years and were guaranteed return rights to their former positions and return transportation to their former duty stations. Under these circumstances, the IAGS employees seldom sold their residences at their former duty stations because of the likelihood of their return to those duty stations. However, we have been informally advised by officials from DMA that incident to the transfer to Texas all IAGS employees have been offered the option to exercise their return rights to their former duty stations.

In view of the special circumstances of this situation, the Personnel Officer, IAGS, urges that the transfer from Panama be treated as part of the employees' original transfers and that these employees be reimbursed for real estate expenses incurred in the sales of their residences at their former United States duty stations.

Under the provisions of 5 U.S.C. § 5724a(a)(4) (1976), an employee may be reimbursed for certain expenses incurred in connection with the sale of a residence at the old station and purchase of a residence at the new station provided both the old and new duty stations are located within the United States, its territories or possessions, the Commonwealth of Puerto Rico, or the Canal Zone (now referred to as certain areas located within the Republic of Panama). This entitlement is subject to implementing regulations contained in the Federal Travel Regulations (FTR) (FPMR 101-7). Those regulations provide, in para. 2-6.1e, that the settlement dates for the sale and/or purchase transactions must occur within 2 years after the date on which the employee reported for duty at the new duty station.

This regulation was promulgated under the authority of 5 U.S.C. § 5724a and has the force and effect of law. We have long held that this regulation may not be waived or modified by either the employing agency or our Office in any individual case, regardless of the circumstances present. See 49 Comp. Gen. 145 (1969); and David Oberwager, B-193340, December 26, 1978, and decisions cited therein. Therefore, we agree with PDTATAC that these employees may not be reimbursed for the sale of their former residences made more than 2 years after the dates of their transfers to Panama, and we regret that our decision is not more favorable to the IAGS employees.

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Although the Personnel Officer, IAGS, suggests that the transfer from Panama to Texas be treated as part of the employee's original transfer to Panama, we find no basis for such a holding. The transfer to Panama and the transfer of function from Panama to Texas are separate and distinct transfers of official station with separate reimbursement for travel and relocation expenses (if the employees are otherwise eligible). It appears that the IAGS employees were eligible for reimbursement for the sale of the old residence upon transfer to Panama, but most chose not to sell for personal reasons. These employees, therefore, declined an entitlement which, due to the 2-year time limitation, cannot now be revived.

Finally, we note that the transfer of function from Panama to Texas was incident to implementation of the Panama Canal Treaty and the Panama Canal Act of 1979, Pub. L. 96-70, approved September 27, 1979, 93 Stat. 452. However, we find no authority under the Act for treating this transfer as part of an earlier transfer or for authorizing reimbursement for real estate expenses for the sale of a former residence in the United States. See, for example, section 1231(c)(2) of Pub. L. 96-70, 93 Stat. 468.

Accordingly, we hold there is no authority for the reimbursement of real estate expenses incurred more than 2 years from the date of transfer to Panama.

Harry R. Johnston
For the Comptroller General
of the United States