

DECISION



18312
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-196294

DATE: June 1, 1981

MATTER OF: Patrick V. Vail - Reconsideration -
Real Estate Sales Expenses

- DIGEST:**
1. Under 5 U.S.C. § 3581 et seq. a Federal employee who transfers to an international organization becomes an employee of the international organization and is no longer an employee of the United States Government. Thus, reimbursement of travel, transportation and subsistence expenses, and relocation expenses and allowances for such individuals in connection with their duties for the international organization are subject to the terms and conditions of the individual's service agreement with the international organization. Their entitlements are not to be compared with the entitlements of Federal employees who are transferred overseas by a Government agency and are subsequently transferred back to the United States. The latter are entitled only to the travel and transportation expenses allowed under subchapter II of chapter 57, title 5, U.S.C., in connection with their overseas assignments.
 2. Department of Agriculture employee was separated from his position in Phoenix for transfer to international organization in Austria under 5 U.S.C. § 3581 et seq. Incident to his reemployment with the Department of Agriculture at Phoenix, he was immediately transferred to Fresno. Employee's entitlements to change of station benefits in connection with his transfer from Phoenix to Fresno are controlled by the provisions of 5 U.S.C. § 5721, et seq. and implementing regulations applicable to employees transferred between duty stations in the United

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States, and are not subject to those provisions of 5 U.S.C. § 5721 et seq. which are applicable to Government employees transferred by a Federal agency to or from overseas posts of duty.

3. Department of Agriculture employee was separated from his position in Phoenix for transfer to international organization in Austria under 5 U.S.C. § 3581 et seq. Incident to his reemployment with the Department of Agriculture, he was transferred from Phoenix to Fresno. Employee may be reimbursed for expenses incurred in sale of residence in Phoenix incident to transfer to Fresno. Employee would have occupied house at Phoenix but for service overseas with international organization, and it was sold after employee had been definitely informed of transfer. B-196294, August 19, 1980, modified in part. B-166678, May 23, 1969, will no longer be followed as to residence sales expenses.

Dr. Patrick V. Vail has requested reconsideration of that part of our decision B-196294, August 19, 1980, which denied reimbursement for real estate sales expenses in connection with Dr. Vail's transfer in 1978 from Phoenix, Arizona, to Fresno, California, as an employee of the U.S. Department of Agriculture.

The factual background of Dr. Vail's claim is not in dispute and is briefly reviewed as follows. Dr. Vail was an employee of the Agriculture Research Service, USDA, in Phoenix, Arizona, on January 5, 1975, at which time he transferred to a position with the International Atomic Energy Agency (IAEA) in Vienna, Austria. In accordance with § 3582(b) of title 5, U.S.C., Dr. Vail sought reemployment with USDA following completion of his service with IAEA. Although Dr. Vail was unable to be reemployed in the position he formerly held in Phoenix, he was offered and accepted a position with the Agriculture Research Service in Fresno, California. The offer was made to Dr. Vail on October 31, 1977. Dr. Vail accepted the position by letter dated November 15, 1977, and reported for duty in his new position on July 17, 1978.

In our decision B-196294, August 19, 1980, we reviewed the rights and entitlements of Federal employees who transfer to an international organization under the Federal Employees International Organization Service Act (Pub. L. No. 85-795, 72 Stat. 959, August 28, 1958, codified at 5 U.S.C. §§ 3581-3584 (1970)). We pointed out that, within the context of these sections, an individual who transfers to an international organization becomes an employee of the international organization and is no longer an employee of the United States Government. Thus, reimbursement of travel, transportation and subsistence expenses, and relocation expenses and allowances for employees who transfer to an international organization under 5 U.S.C. § 3581 are subject to the terms and conditions of the individual's service agreement with the international organization. However, in view of the unusual circumstances concerning the agency's actions in Dr. Vail's case, we concluded in part as follows:

"However under the facts of the present case, the agency has indicated that Dr. Vail was reemployed pursuant to 5 U.S.C. § 3581 at his former duty station in Phoenix and then--apparently within the same personnel action--transferred to Fresno. As a result, notwithstanding the dubious rationale for the increased expense to the Government, Dr. Vail's travel and relocation entitlements are based on his status as a Government employee transferred in agency's interest within the United States and are payable pursuant to chapter 57 of title 5 United States Code."

In accordance with this reasoning, and pursuant to the legal authority provided in 5 U.S.C. § 5724a, we further pointed out in our decision that payment of the sales expenses of Dr. Vail's residence in Phoenix in connection with his transfer to Fresno was subject to paragraph 2-6.1d of the Federal Travel Regulations. It contains the requirement that the dwelling for which reimbursement of selling expenses is claimed was the employee's residence at the time he was first definitely informed by competent authority of his transfer to his new official station. This requirement resulted in the denial of selling expenses because Dr. Vail and his family were in Vienna at the time he was definitely

advised concerning his new official duty station at Fresno and, thus, his dwelling at Phoenix could not have been his actual residence as required by the regulations. In support of this conclusion we referred to our decision B-166678, May 23, 1969, which resembled Dr. Vail's case and was similarly adjudicated.

After reconsideration of Dr. Vail's case, we reverse our prior decision and hold that his claim for real estate sales expenses is allowed for the reasons that follow.

We start by pointing out the critical distinction between Federal employees who are transferred overseas by a Government agency and are subsequently transferred back to the United States, and those persons who transfer from a Government agency to an international organization and upon returning to the United States are reemployed by their former agency. The former remain employees of the Federal Government when they are transferred to agency positions overseas, and they are entitled to the travel and transportation expenses allowed under subchapter II of chapter 57, title 5 U.S.C., in connection with their overseas assignments. When such an employee is transferred back by an agency from an overseas duty station to a duty station in the United States, he may not be reimbursed for expenses incurred in selling his old residence or buying a new residence. Such expenses are prohibited by statute unless both the old and new duty stations are located within the United States or other specified locations. 5 U.S.C. § 5724a(a)(4). This is so even when the employee is assigned to a new duty station in the United States upon completion of the overseas tour. Army Corps of Engineers, B-194423, March 31, 1980.

However, in the case of a Federal employee who transfers from a Federal agency to an international organization under the controlling provisions of 5 U.S.C. § 3581 et seq., he becomes an employee of the international organization and is no longer an employee of the United States Government. Thus, our Government does not provide reimbursement of travel, transportation and subsistence expenses, and relocation expenses and allowances to employees who transfer to international organizations under 5 U.S.C. §§ 3581, et seq. Rather, in such circumstances these expenses are subject to

the terms and conditions of the individual's service agreement with the international organization. If such a person separates from the international organization within 5 years, or any extension thereof, and applies within 90 days after the separation, he "is entitled to be reemployed within 30 days of his application for reemployment in his former position or a position of like seniority, status, and pay in the agency from which he transferred * * *." 5 U.S.C. § 3582(b).

Although section 3582(b) does not specifically require reemployment at the individual's old duty station, we believe that Congress intended former employees to be reemployed whenever possible at the locations from which they transferred to the international organization. Therefore, in the event that an agency is unable to reemploy the person at the same duty station, we concluded that the person is entitled, upon reemployment at a different location, to be reimbursed the travel and relocation expenses authorized under 5 U.S.C. § 5724 and § 5724a. The prohibition against reimbursement of residence transaction expenses on overseas transfers in § 5724a(a)(4), therefore, does not apply to a person reemployed after separation from an international organization because he does not have an "official station" overseas within the meaning of that section.

This then distinguishes Dr. Vail from Federal employees generally who are transferred overseas. He has no old duty station abroad and is not covered by 5 U.S.C. § 5724a(a)(4). As a result, Dr. Vail's case should not be compared with our decisions regarding real estate sales expenses for Government employees transferred to or from overseas duty posts under 5 U.S.C. § 5724a(a)(4). Rather, in the present case we must consider the propriety of payment of real estate sales expenses in connection with Dr. Vail's transfer in connection with his reemployment under 5 U.S.C. § 3582(b) as a USDA employee from his old duty station in Phoenix to his new duty station at Fresno.

Accordingly, Dr. Vail's entitlements to change of station benefits in connection with his transfer from Phoenix to Fresno are controlled by the provisions of 5 U.S.C. §§ 5721, et seq. (1976), and implementing regulations contained in the Federal Travel Regulations (FTR)

(FPMR 101-7) (May 1973) as they apply to employees transferred between duty stations within the conterminous United States, and should not be compared with nor constrained by those provisions of 5 U.S.C. §§ 5721, et seq. which are applicable to Government employees transferred by a Federal agency to or from overseas posts of duty.

Thus, the only bar to payment of the expenses of the sale of Dr. Vail's residence is the requirement set forth in FTR para. 2-6.1d that the dwelling for which reimbursement of selling expenses is claimed was the employee's residence at the time he was first definitely informed by competent authority of his transfer to the new official station. Our prior decision relied on this provision in denying Dr. Vail's sales expenses.

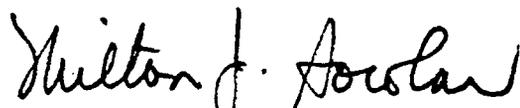
Upon reconsideration of this issue, we now believe that the occupancy requirement of FTR para. 2-6.1d does not preclude payment of residence sale expenses because, prior to the effective date of his reemployment, the agency had informed Dr. Vail of the necessity for a transfer upon reemployment. The record reflects the parties desire to communicate and stabilize the reemployment relationship in advance of Dr. Vail's return to his old duty station and subsequent transfer to the new duty station. To that end, discussions took place in the spring of 1977 to relocate Dr. Vail at either Riverside or Fresno, California, and it was definitely decided that he would not be returned to Phoenix. Dr. Vail was informed of the fact he would be transferred as evidenced by a memorandum of May 25, 1977. He did not enter into a contract to sell his residence until June 11, 1977. These agency actions were consistent with the expressed purpose of reemployment protection contained in 5 U.S.C. § 3582(b). See also Executive Order No. 11552, August 24, 1970, set out as a note following 5 U.S.C. § 3584 (1976). Dr. Vail still owned his residence at Phoenix, and, but for his transfer to and service with the international organization, he would have continued to reside there as an employee of USDA prior to his authorized transfer to Fresno.

In these circumstances, and in view of the intent of 5 U.S.C. § 3582, we hold that, for purposes of Dr. Vail's official transfer from Phoenix to Fresno, his home in the Phoenix area was his actual residence at the time he was

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first definitely informed of his transfer within the meaning of para. 2-6.1d of the FTR. See B-164043, May 28, 1968.

Accordingly, Dr. Vail may be reimbursed, under 5 U.S.C. § 5724a, the expenses of selling his residence at Phoenix, his old duty station, incident to his official transfer to Fresno. Our decision B-196294, August 19, 1980, is modified accordingly, and as to residence sales expenses our decision B-166678 May 23, 1969, will no longer be followed.



Acting Comptroller General
of the United States