

DECISION

19219
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-200691

DATE: August 24, 1981

MATTER OF: Mr. Anthony L. Santulli

- DIGEST:**
1. Notwithstanding rule that per diem is not payable at permanent duty station, employee claims per diem for period between July 1, 1973, and June 1975 for duty in Hartford area on basis that Hartford did not become his new duty station until Standard Form 50 evidencing transfer was issued in June of 1975. Since record otherwise establishes that employee was transferred to Hartford effective July 1, 1973, agency's failure to issue travel orders and otherwise formally document transfer until 1975 does not provide a basis to pay per diem claimed or to reimburse expenses of house-hunting trip undertaken more than 2 years after effective date of transfer.
 2. Employee who sold residence at old duty station in 1975 may not be reimbursed a legal fee of \$250 incurred incident to that sale since the legal fee is not itemized so that allowable cost may be separated from costs of representation and counseling. Compare 56 Comp. Gen. 561 (1977) for transfers subsequent to April 27, 1977.

This action is in response to a letter from Mr. Anthony L. Santulli, an employee of the General Services Administration (GSA), in which he appeals the settlement of our Claims Group, dated June 26, 1979. The settlement authorized reimbursement of a broker's commission paid on the sale of his residence in Wolfeboro, New Hampshire. However, it disallowed Mr. Santulli's claim for legal expenses incident to that transaction in the absence of an itemization to determine the costs authorized to be paid under the provisions of paragraph 2-6.2c of the Federal Travel Regulations (FTR) (FPMR 101-7) (May 1973). Mr. Santulli's claim for a house-hunting trip in August 1975 in connection with this move was disallowed for the reason that it occurred more than

[Claim for Legal Fees and Per Diem in Connection With
116194 ~~018180~~ Real Estate Transaction]

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2 years after July 1, 1973, the date his permanent station was changed. His claim for per diem while assigned to duty in the Hartford area subsequent to July 1, 1973, was similarly disallowed on the basis that Hartford became his permanent duty station on that date. For the reasons stated below, these disallowances by our Claims Group are sustained.

In his appeal, Mr. Santulli states that his attorney has declined to itemize the \$250 legal fee paid incident to the sale of his former residence. With regard to his entitlement to house-hunting trip expenses and additional per diem while in the Hartford area, he specifically challenges the finding that Hartford became his permanent duty station effective July 1, 1973. He claims that his transfer from Boston was not effective until the Form SF-50 "Notification of Personnel Action" reflecting that transfer was executed in June 1975.

The regulations governing the reimbursement of real estate expenses including legal fees, incurred incident to transfer, are contained in FTR paragraph 2-6.2c of which provides that:

"Legal and related expenses. To the extent such costs have not been included in brokers' or similar services for which reimbursement is claimed under other categories, the following expenses are reimbursable with respect to the sale and purchase of residences if they are customarily paid by the seller of a residence at the old official station or if customarily paid by the purchaser of a residence at the new official station, to the extent they do not exceed amounts customarily charged in the locality of the residence: costs of (1) searching title, preparing abstract, and legal fees for a title opinion or (2) where customarily furnished by the seller, the cost of a title insurance policy; costs of preparing conveyances, other instruments, and contracts and related notary fees and

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recording fees; costs of making surveys, preparing drawings or plats when required for legal or financing purposes; and similar expenses. Costs of litigation are not reimbursable."

In deciding claims relating to real estate transactions accruing prior to April 27, 1977, we have consistently held that an employee may not be reimbursed for the expenses of representing and counseling by an attorney in relation to real estate transactions. He may be reimbursed only for services of the types specifically enumerated in the above section. 48 Comp. Gen. 469 (1969) and B-180752, June 12, 1974. We have also held that no part of a lump-sum legal fee may be reimbursed; there must be an itemization of the services performed and an appropriate part of the fee must be allocated to the itemized services. 54 Comp. Gen. 67 (1974) and B-183240, June 1, 1976. Consistent with these decisions, no part of the \$250 attorney fee claimed by Mr. Santulli may be paid since there is no appropriate itemization. Compare 56 Comp. Gen. 561 (1977), for claims which arose on and after April 27, 1977.

As indicated above, Mr. Santulli's entitlement to house-hunting trip expenses depends upon whether his transfer from Boston to Hartford was effective July 1, 1973, or in June of 1975. The house-hunting trip was taken in August of 1975. If July 1, 1973, was the effective date of his transfer, reimbursement of house-hunting trip expenses would be precluded by FTR paras. 2-1.5(a)(2) and 2-4.1a which establish a period of 2 years after the date of transfer within which house-hunting travel must be undertaken. Since FTR para. 1-7.6 specifically precludes payment of per diem to an employee while at his duty station, Mr. Santulli's entitlement to per diem while in the Hartford area prior to June 1975 similarly depends upon whether Hartford became his permanent duty station on July 1, 1973, or, as he claims, in June of 1975.

The record indicates that Mr. Santulli was verbally informed by his supervisor that Hartford was

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to become his permanent duty station effective July 1, 1973. Mr. Santulli has made a number of allegations of impropriety regarding his supervisor's motives for directing his transfer which have been the subject of a grievance as well as an internal investigation. These allegations have not been substantiated by either. However, the record does confirm Mr. Santulli's claim that his transfer was not formally documented until June 3, 1975. On that date, apparently as a result of his grievance, a Standard Form 50, Notification of Personnel Action, was executed documenting his transfer as of July 1, 1973. On September 29, 1975, travel orders were issued authorizing Mr. Santulli to be reimbursed real estate sale and house-hunting trip expenses. These orders show July 1973 as the date he reported to Hartford.

Having considered the circumstances of Mr. Santulli's transfer in the context of his grievance as well as in the course of its own investigation, the agency considers Mr. Santulli to have been transferred to Hartford effective July 1, 1973, and characterizes the documentation irregularities as a matter of administrative oversight. Mr. Santulli claims that he was not transferred until the Standard Form 50 documenting his permanent change of station was issued on June 3, 1975.

The Federal Travel Regulations do not expressly state what constitutes the authorization of a transfer, though travel orders are generally recognized as the authorizing document. A personnel action such as a change of the employee's position resulting from the transfer would be documented by a Standard Form 50 but issuance of this form does not effect the actual date of transfer. As noted in 54 Comp. Gen. 983 (1975), the proper means for an agency to provide lead time for the employee to prepare for a transfer is to issue travel orders to him a reasonable time in advance of the effective date of the transfer. Although this was not done in Mr. Santulli's case, the record indicates that his permanent change of station was directed effective July 1, 1973, by an official who had authority to order his transfer. Since the location of an employee's permanent duty station is not determined merely on the basis of administrative designation and documentation,

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the agency's failure to document Mr. Santulli's transfer prior to its effective date does not preclude a finding that he was transferred in July 1973.

We have consistently recognized that the location of an employee's permanent duty station is not simply a matter of administrative designation, but a question of fact to be determined from the orders and, where necessary, from the character of the assignment, particularly as to the duration thereof and the nature of the duties. B-172207, July 21, 1971. In the usual case of an employee who reports to his permanent duty station on a daily basis, the location of his permanent station is a question of where he is expected to perform his principal duties. In a case like Mr. Santulli's where the employee is routinely in a travel status, other factors become significant.

While Mr. Santulli claims that he had previously inquired about the documentation for his 1973 transfer, there is nothing in the record to show that he raised any question concerning his permanent assignment to Hartford until he sold his New Hampshire residence in 1975. Prior to that date he filed travel vouchers which indicate that Hartford was his duty station and there is no indication that he did not understand that he was assigned to permanent duty at Hartford after July 1, 1973. The record clearly reflects that he felt he was unjustifiably transferred to Hartford. Notwithstanding his objections and though he did not move his residence until almost 2 years later, there is nothing in the record to suggest that Hartford did not become his permanent duty station effective July 1, 1973.

Since we are unable to agree with Mr. Santulli's view that he was not transferred to Hartford until June of 1975, there is no basis to allow either his claim for house-hunting trip expenses or his claim for per diem while in the Hartford area. Accordingly, our Claims Group's settlement is sustained.


Acting Comptroller General
of the United States