

DECISION

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

FILE: B-207564

DATE: November 22, 1982

MATTER OF: Lawrence C. Jackson - Relocation Expenses -
Administrative Intent To Transfer

DIGEST: Employee who was transferred from Lewistown, Montana, to Baker, Oregon, claims reimbursement for the costs incurred in selling his Lewistown residence. Since project to which employee was assigned was ended, and since agency was not able to give definite reply to inquiry concerning his next assignment, employee reasonably believed that he would be transferred and placed his house on the market. Employee may be reimbursed for expenses of sale as totality of circumstances indicates substantial compliance with requirement that there be an administrative intention to transfer an employee when real estate expenses are incurred.

Ms. Anita R. Smith, an Authorized Certifying Officer, National Finance Center, U. S. Department of Agriculture, requests our determination as to whether Mr. Lawrence C. Jackson, an employee of the Soil Conservation Service (SCS), is entitled to reimbursement of \$2,483.73 for real estate transaction expenses that he incurred in the sale of his residence at his old duty station, before he received actual notice of his transfer. For the reasons set forth below, we hold that Mr. Jackson is entitled to reimbursement of the real estate expenses.

Mr. Jackson was the project engineer in the Big Spring Creek Watershed Project at Lewistown, Montana. On April 20, 1977, he attended a meeting at the City-County Planning Board at which a decision was made to notify the SCS to release its funds because the City-County was unable to obtain land acquisition money to complete the project. On April 21, 1977, the alternate contracting officer for the City-County notified the State Conservationist of SCS to release SCS funds for the final dam of the project because of lack of local funds.

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Mr. Jackson then checked with his supervisor and the Montana State Office about his next assignment, and he "received no definite answer but was told that no projects in Montana were ready for construction," and "that it would be at least two years before any projects reached the construction stage." Because of this advice and the continuing indications that his job would no longer be needed, and that ultimately he would have to be transferred, he sent his Appraisal Summary (an internal SCS application procedure) to several states in the Northwest region in the hope that one might have a project in need of him. At this time, a local realtor who suspected that Mr. Jackson would be moving due to the completion of the project, contacted him about selling his Lewistown residence. On June 8, 1977, Mr. Jackson accepted an offer for his home. The closing date was July 1, 1977, but, under the terms of the contract, Mr. Jackson retained possession until August 1, 1977.

Mr. Jackson was offered a position in Baker, Oregon, on July 29, 1977, which he accepted on August 1, 1977, before vacating his home in Lewistown. On that same day, a travel order was issued to Mr. Jackson by the State Administrative Officer authorizing his transfer of station expenses. Mr. Jackson summarized his situation as follows:

"The Watershed Office in Lewistown has been closed and there are no plans to continue my position there. Another engineer on the project was transferred just before me. I feel that a transfer for me was imminent since my work in Lewistown was complete and that I should not be denied reimbursement of expenses on the sale of my former residence in Montana. * * *"

In a memorandum dated December 2, 1977, the Montana State Administrative Officer states that the agency intended to use Mr. Jackson's services on another program in the Lewistown area until at least the spring of 1978. When that program ended, the Administrative Officer states that the agency then planned to evaluate the need for Mr. Jackson's services in Lewistown. The record does not indicate that they informed Mr. Jackson of these plans.

Mr. Jackson has responded to the assertions of the Montana State Administrative Officer by pointing out that his former position in Lewistown has been left vacant since he transferred. Mr. Jackson further responded: "I feel I did the SCS a favor by looking for work in another state as the workload in Montana at the time was very low. They had no work for me." Beyond the statement quoted above, the SCS has not challenged these statements made by Mr. Jackson to the effect that no work remained for him in Montana, nor has it shown any evidence of any contemporaneous oral or written statements notifying Mr. Jackson of other work at Lewistown.

After moving, Mr. Jackson filed a claim for relocation expenses, including \$2,483.73 for expenses that he incurred in selling his Lewistown residence. The SCS denied the claim for real estate expenses for the following two reasons: (1) there was no administrative intent to transfer Mr. Jackson on the date of the sale on July 1, 1977; and (2) Mr. Jackson did not hold title to the residence on the date of his official transfer on August 1, 1977. Due to an administrative error, however, the claim was paid. The agency is now attempting to recover the payment. All other relocation expenses were paid and are not now at issue.

The Government is authorized by 5 U.S.C. § 5724a(a)(4) (1976), to pay the real estate transaction expenses of employees who transfer in the interest of the Government. Reimbursement of relocation expenses for Federal employees is governed by the provisions of the Federal Travel Regulations, FPMR 101-7 (May 1973) (FTR). Under FTR para. 2-6.1d, the dwelling for which reimbursement of selling expenses is claimed must be the employee's residence at the time he was first definitely informed by competent authority of his transfer to a new duty station. From this provision comes the general rule that an employee may be reimbursed for real estate expenses incurred prior to, and in anticipation of, a transfer only if an administrative intent to transfer the employee exists at the time the expenses are incurred. Samuel V. Britt, B-186763, October 6, 1976. The intent is usually manifested by a travel order, but the absence of formal orders does not necessarily bar recovery if there is other objective evidence of the intent to make a transfer. For example, an employee who contracts to sell his home

before receiving official notification of his transfer may be reimbursed if the agency clearly intended to transfer the employee at the time of the real estate transaction. Orville H. Myers, 57 Comp. Gen. 447 (1978). In that case we also said that what constitutes agency intent to transfer an employee depends upon the facts in each case.

We have held in past decisions that the following sets of circumstances constituted a clear intention to transfer an employee: unofficial telephone contacts linked with a notice of reduction-in-force, and an offer of a lower grade position (B-170800, December 22, 1970); a letter notifying the employee that a position was surplusage, coupled with an offer to help him find another job (B-165796, February 12, 1969); a verbal notification of tentative selection for a position (B-162842, November 22, 1967); and an official announcement that all essential functions of the installation were to be relocated (Orville H. Myers, 57 Comp. Gen. 447 (1978)). See also Gerald S. Beasley, B-196208, February 28, 1980. In B-165796, supra., we held that reimbursement of residence transaction expenses was proper even though the employee closed the sale of his house before being offered another position since he contracted to sell it after receipt of the surplusage notice.

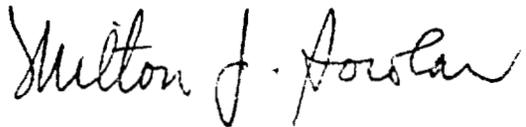
Thus, while Mr. Jackson assumed the risk of not being reimbursed when he sold his residence before receiving formal notification on July 29, 1977, that he was selected for a position in Baker, Oregon, the sale of a residence before a definite notice of transfer does not in itself disqualify an employee from reimbursement of allowable expenses. Joseph L. White, 58 Comp. Gen. 208 (1979). Thus, a reading of all of the above cases shows that where the totality of the circumstances leads an employee to reasonably believe that he will be transferred, and he actually is transferred, we have found that there is substantial compliance with the requirement for a clearly evident intention to transfer the employee and have permitted reimbursement.

Mr. Jackson incurred the expenses for which reimbursement is questioned only after he became aware that his assignment was ending, and that there was no reasonable

prospect for additional work for him in Montana. Under these circumstances, and in line with the above-cited decisions, and since the SCS made no attempt to contradict Mr. Jackson's impression of his need to transfer when appropriate officials were made aware of his circumstances, we find that there was substantial compliance with the requirement of a clearly evident intent to transfer him. The record contains Mr. Jackson's uncontroverted statement that he put his house up for sale only after he became aware that his job was ending, and when he could see that no work remained for him in the area. In the circumstances we will not question the veracity of Mr. Jackson's statement that he sold his house only in anticipation of transfer.

When Mr. Jackson incurred the real estate expenses, there were compelling reasons in the Government's interest for a transfer, and these reasons were the basis for contemporaneous travel orders authorizing the payment of all of Mr. Jackson's relocation expenses, including real estate expenses, as justified under Federal Travel Regulations. Where compelling reasons lead the employee to believe that he will be transferred, and he actually is transferred, we have held that there is substantial compliance with the requirement for a clearly evident intention to transfer him, and reimbursement of the claimed expenses is authorized. See B-170800, December 22, 1970.

Accordingly, Mr. Jackson's claim for residence transaction expenses is allowed, and collection action for amounts paid may be terminated.

for 
Comptroller General
of the United States