

DECISION

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

FILE: B-207175

DATE: December 2, 1982

MATTER OF: Jack R. Valentine - Reimbursement of
Relocation Expenses

DIGEST:

1. Employee, who was transferred to new official duty station 36 miles away from old station, is not entitled to relocation expenses where the agency determines that relocation of the employee's residence was not incident to the transfer of duty station. We will not upset agency's determination that employee's relocation was not incident to transfer where, although employee attempted to sell home and moved family and household goods out of residence, the record contains no evidence of employee's intention or good faith attempt to relocate closer to new duty station.
2. Employee, who was transferred to new duty station 36 miles from old duty station, claims subsistence expenses while occupying temporary quarters at old duty station. Employee is not entitled to payment of temporary quarters since the distance between his new official station and old residence is not more than 40 miles greater than the distance between his old residence and his old official station, as required by paragraph 2-5.2h of the Federal Travel Regulations.

The issue in this decision is whether an employee is entitled to certain relocation expenses including temporary quarters expenses incident to a short distance transfer. We hold that the employee may not be reimbursed for relocation expenses where the agency has determined that the employee's change of residence was not incident to the short distance transfer. In addition, we hold that the employee is not eligible for temporary quarters expenses under the applicable regulations in view of the short distance between the old and new duty stations.

This decision is in response to a request from Ms. Anita R. Smith, an authorized certifying officer with the Department of Agriculture in New Orleans, Louisiana, concerning the claim of Mr. Jack R. Valentine for mileage, transportation of his household goods, temporary quarters and other miscellaneous expenses incident to his transfer.

Mr. Valentine, an employee of the Soil Conservation Service (SCS), United States Department of Agriculture (USDA), was transferred in September 1981 from SCS's office in Magdalena, New Mexico, to a newly consolidated office in Datil, New Mexico, a distance of 36 miles. In connection with this transfer, Mr. Valentine was authorized to move his family and household goods from his existing residence in San Antonio, New Mexico, to his new station at Datil, a distance of 73 miles. The official transfer date was set for September 27, 1981.

Mr. Valentine states that he was first officially notified of the transfer in August 1981, and that at that time, in anticipation of relocating his family to the Datil area, he listed his San Antonio residence for sale with a local real estate firm. According to Mr. Valentine, in September 1981 he began to look for suitable and affordable housing in the vicinity of Datil, but could find none. As a result, from August 1981 to January 1982, his family remained in the San Antonio home. In addition, beginning on October 1, 1981, when the Datil office first opened, Mr. Valentine established and maintained a separate residence in a camper trailer in that city in order to avoid a 146-mile daily commute from San Antonio to Datil.

On January 9, 1982, Mr. Valentine entered into a contract for the sale of his San Antonio residence with the closing date scheduled for February 10, 1982. In anticipation of the closure, Mr. Valentine rented another house in San Antonio and moved his family and household goods into that house on January 14, 1982. Mr. Valentine states that he relocated his family to this second San Antonio house at the time because he still could not find suitable housing in or near Datil, yet he was then legally obligated to vacate the residence he was selling so that the buyer's family could move in.

The buyer subsequently breached the contract to purchase the house, and Mr. Valentine then brought suit for specific performance of the contract. Mr. Valentine states that his family was required to reoccupy their former residence at the time of the lawsuit in order to mitigate damages resulting from the breach. While his family moved back to their former home, Mr. Valentine still maintained the trailer in Datil for his own weekday use.

Mr. Valentine has claimed mileage, transportation of his household goods, temporary quarters, and miscellaneous expenses incident to his transfer. The agency denied the claim on the grounds that the expenses detailed by Mr. Valentine were not incurred incident to his transfer because of the short distance between Mr. Valentine's old residence and his temporary quarters and because of the availability of housing in the Datil area. The agency now has asked our Office to determine whether Mr. Valentine is entitled to reimbursement for any of the expenses he has claimed.

The payment of travel, transportation, and relocation expenses of transferred Government employees is authorized under 5 U.S.C. §§ 5724 and 5724a (1980) as implemented by the Federal Travel Regulations, FPMR 101-7 (May 1973) (FTR). These regulations provide at paragraph 2-1.3 as follows:

"Travel covered. When change of official station or other action described below is authorized or approved by such official or officials as the head of the agency may designate, travel and transportation expenses and applicable allowances as provided herein are payable in the case of (a) transfer of an employee from one official station to another for permanent duty, Provided That: the transfer is in the interest of the Government and is not primarily for the convenience or benefit of the employee or at his request; the transfer is to a new official station which is at least 10 miles distant from the old official station; and, in the case of a relatively

short distance relocation, a determination of eligibility is made under the provisions of 2-1.5b(1) * * *."

With regard to a relatively short distance relocation, paragraph 2-1.5b(1) of the FTR provides:

"Transfers. When the change of official station involves a short distance within the same general local or metropolitan area, the travel and transportation expenses and applicable allowances in connection with the employee's relocation of his residence shall be authorized only when the agency determines that the relocation was incident to the change of official station. Such determination shall take into consideration such factors as commuting time and distance between the employee's residence at the time of notification of transfer and his old and new posts of duty as well as the commuting time and distance between a proposed new residence and the new post of duty. Ordinarily, a relocation of residence shall not be considered as incident to a change of official station unless the one-way commuting distance from the old residence to the new official station is at least 10 miles greater than from the old residence to the old official station. Even then, circumstances surrounding a particular case (e.g., relative commuting time) may suggest that the move of residence was not incident to the change of official station."

Our Office consistently has held that an agency has broad discretion in applying the general criteria of FTR paragraph 2-1.5b(1) to determine whether an employee's move from one residence to another is incident to a change of official duty station. David E. Meisner, B-187162, February 9, 1977. Unless an agency makes such a determination, there is no basis to pay an employee's claim for relocation expenses arising from a short distance move. 51 Comp. Gen. 187 (1971); and Stanley J. Williams, B-184029, January 26, 1976. A determination

that a change of station is in the interest of the Government does not necessarily imply that the relocation of the employee's residence is incident to the change of station. Roger A. Nichols, B-188083, June 27, 1977.

We have not objected to the reimbursement of employees' moving expenses in a number of cases involving relatively short distance transfers. For example, we have held that the fact that an employee's new residence is located near the former residence would not in itself preclude reimbursement of relocation expenses, so long as the employee commutes daily to his new duty station from the new residence. B-175822, June 14, 1972. Also, the fact that commuting time or distance was not decreased would not necessarily prevent reimbursement of expenses, if it could be otherwise determined that the employee's move was incident to his transfer. Gary A. Ward, 54 Comp. Gen. 751 (1975). In each particular case, the agency involved is required to consider a variety of factors surrounding the relocation, and on the basis of all such information, determine whether the relocation was truly incident to the employee's transfer. See Harvey Knowles, 58 Comp. Gen. 319 (1979).

In support of his claim for reimbursement, Mr. Valentine has cited our Ward decision, in which an employee who had been transferred from Virginia to Pennsylvania sold his Virginia home, but then relocated to a house 1 mile from his former residence. This relocation occurred after his family had occupied temporary quarters near his new duty station for 26 days, and after his children had enrolled in Pennsylvania schools. We held in that case that reimbursement of real estate expenses was proper since the employee had made a good faith effort to relocate his residence near his new duty station, and thereafter had commuted daily to that new station. 54 Comp. Gen. 751, 753.

Similarly, we approved reimbursement of relocation expenses in B-175822, in which an employee relocated within the same city as his former residence, San Jose, California, because after he sold his house with the intention of relocating to Monterey, California, his wife was unable to find employment near that new duty

station. Finally, in B-172705, May 28, 1971, an employee notified his landlord of his impending transfer and the landlord then leased the premises to other tenants. When the employee could not find housing at his new duty station due to a "critical housing shortage" in that area, he moved into a new residence close to his old duty station, since he could not return to his former residence at that time. We approved reimbursement since the employee had given notice of terminating his lease pending the consummation of his transfer, there was a critical housing shortage in the near vicinity of his new duty station, and other suitable rental housing was not available at his old duty station. B-172705, supra.

In this case, the Soil Conservation Service has made a determination that Mr. Valentine's relocation was not incident to the transfer of his official duty station from Magdalena to Datil and has refused to reimburse Mr. Valentine for his claimed relocation expenses. We find nothing in the existing record to warrant disturbing this determination by the SCS.

We acknowledge that Mr. Valentine did attempt to sell his home in San Antonio shortly after he learned of his transfer from Magdalena to Datil. The fact that the Valentines' house was placed on the market, however, in itself does not establish that Mr. Valentine intended to relocate incident to his transfer of duty station. To the contrary, other factors surrounding the relocation in this case suggest that Mr. Valentine's plans to move were not devised incident to his transfer. In this regard, although Mr. Valentine states that he tried, but was unable, to locate suitable housing in or near Datil, the agency maintains that there has not been a housing shortage in that area. In support of its position, the agency states that prior to making the final decision to combine the Magdalena and Quemado offices in Datil, it conducted a housing survey and determined that there were adequate living accommodations in the Datil area for all employees transferred to that site. In addition, the agency states that two other employees transferred from Magdalena to Datil were able to find housing in the Datil vicinity with little difficulty.

Mr. Valentine has presented no credible evidence to show that he made a good faith effort to relocate to

Datil, or to any place closer to his new duty station than he had lived before. He did not move his family to temporary quarters at the new duty site or otherwise establish connections with the new community, as was true in our decision in Ward, 54 Comp. Gen. 751, which Mr. Valentine cites in support of his position. Without any facts to demonstrate an intent or a good faith attempt on the part of Mr. Valentine to relocate nearer to his new duty station (either in commuting time or distance), we will not disturb the agency's determination that Mr. Valentine's attempt to relocate was not incident to his transfer. We do not find that this determination is arbitrary, capricious, or an abuse of discretion. James A. Grant, B-179907, June 7, 1974.

Furthermore, we do not believe that the payment of temporary quarters is authorized under the facts of this case. Paragraph 2-5.2h of the FTR provides, in part, as follows:

"An employee or members of his immediate family shall not be eligible for temporary quarters expenses when the distance between the new official station and old residence is not more than 40 miles greater than the distance between the old residence and the old official station * * *."

The certifying officer states that according to the Standard Highway Mileage Guide, the distance between Datil and San Antonio is 73 miles, and the distance between San Antonio and Magdalena is 37 miles, a difference of 36 miles. Since Datil is only 36 miles further from Mr. Valentine's old residence than Magdalena is, the certifying officer believes the claim may not be paid.

We agree with this determination. Using the formula stated in FTR para. 2-5.2h, the difference between the distance from Datil to San Antonio (73 miles) and the distance from Magdalena to San Antonio (37 miles) is only 36 miles. Therefore, Mr. Valentine's move from his San Antonio home to temporary quarters also within San Antonio does not satisfy the 40-mile limitation of FTR para. 2-5.2h. Accordingly, his claim for temporary quarters must be denied.

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In view of the foregoing discussion, the voucher submitted by Mr. Valentine may not be paid.

for *Milton J. Aorstan*
Comptroller General
of the United States