

DECISION

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

FILE: B-207728

DATE: January 13, 1983

MATTER OF: Adolph V. Cordova

DIGEST: Employee transferred from Denver to Phoenix and then back to Denver, who sold Denver residence within the 1 year from effective date of first transfer but subsequent to retransfer, is entitled to reimbursement of residence sale expenses incident to initial transfer to Phoenix. Subsequent transfer does not extinguish the right to reimbursement created by the initial transfer and since real estate sale expenses were incurred prior to prospectively applicable holding in Matter of Shipp, 59 Comp. Gen. 502 (1980), reimbursement is not limited to expenses incurred prior to notice of re-transfer or those which could not be avoided.

The Director, Budget and Finance Division, Equal Employment Opportunity Commission, has requested an advance decision whether Mr. Adolph V. Cordova may be reimbursed real estate expenses associated with the sale of his residence at Colorado Springs, Colorado, after he had been retransferred from Phoenix, Arizona, to Denver, Colorado. In order to be reimbursed residence sale expenses under 5 U.S.C. 5724a(a)(4), the property sold must have been the employee's residence at his old duty station. Since the Colorado Springs property had been Mr. Cordova's residence at his old duty station prior to his initial transfer from Denver to Phoenix and since that residence was sold within 1 year of the effective date of that transfer and prior to the date of our holding in 59 Comp. Gen. 502 (1980) real estate sale expenses may be reimbursed in connection with his first transfer from Denver to Phoenix.

Mr. Cordova was appointed to the Commission's District Office in Phoenix, Arizona, in September 1978. He transferred to Phoenix from Denver, Colorado, where he had worked with another agency. The residence from

024376

which he had commuted to work in Denver was located in Colorado Springs. In January 1979 the Commission notified Mr. Cordova that as the result of a reorganization he would be transferred from the Phoenix District Office to the Denver District Office. Although Mr. Cordova did not sell his Colorado Springs residence until after he had transferred back to Denver from Phoenix, the sale was consummated by September 1979, within 1 year from the date of his earlier transfer from Denver to Phoenix. The Director of the Budget and Finance Division points out that the Colorado Springs property was not Mr. Cordova's residence while assigned to permanent duty in Phoenix and he suggests that it, therefore, does not qualify as his residence at the old duty station for purposes of reimbursing real estate transaction expenses incident to his transfer from Phoenix to Denver. The Director refers specifically to decisions of this Office holding that real estate transaction expenses may not be reimbursed for the sale of a residence which was not the residence of the employee at his old duty station. While these decisions would preclude reimbursement of expenses for sale of the Colorado Springs residence incident to Mr. Cordova's transfer from Phoenix to Denver, they are not dispositive in this case because they did not involve successive transfers or the sale of property that qualified as the employee's residence at his old duty station for purposes of an earlier transfer.

The significant transfer to consider in Mr. Cordova's situation is the first one from Denver to Phoenix resulting from his transfer to the Commission from another agency.

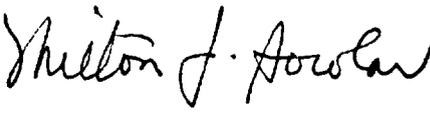
We have held that an employee who is retransferred to a former duty station is under an obligation to avoid unnecessary expenses and is entitled only to those real estate transaction expenses which he incurred prior to notice of retransfer and those which cannot be avoided. Matter of Shipp, 59 Comp. Gen. 502 (1980). That decision, however, is prospective in application and does not affect Mr. Cordova's entitlement to real estate transaction expenses which were incurred prior to May 28, 1980.

Under prior decisions, since the sale occurred within the 1-year time period allowed for sale incident to that transfer, the residence sale expenses may

B-207728

be reimbursed on the basis of the entitlement created by the first transfer. Matter of Jackson, B-201652, September 1, 1981.

Accordingly, Mr. Cordova's sale expenses of his Colorado Springs residence may be reimbursed.


for Comptroller General
of the United States