

**DECISION**

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

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29189**FILE:** B-206246**DATE:** August 29, 1984**MATTER OF:** George S. McGowan - Claim for  
Real Estate Expenses**DIGEST:**

Employee anticipated transfer to a new position at a new duty station and offered his residence at old duty station for sale. This residence was sold before the new position vacancy was announced, before the employee was selected, and before he was first definitely informed of the transfer. In the absence of previously existing administrative intent to transfer the employee, the real estate sales expenses may not be paid.

ISSUE

The issue in this decision involves the claim of an employee for reimbursement of the expenses of sale of a residence at the old duty station where the residence was sold in anticipation of a transfer to a new duty station. We hold that the employee may not be reimbursed for these expenses in the absence of administrative intent to transfer the employee clearly evident at the time the expenses were incurred.

BACKGROUND

This decision is in response to a request from Ms. Betty D. Gillham, an authorized certifying officer with the Bonneville Power Administration (BPA), Department of Energy, concerning a claim for real estate expenses by Mr. George S. McGowan, a BPA employee employed in Portland, Oregon.

In his claim for reimbursement, Mr. McGowan states that, upon his employment in Kent, Washington, in November 1979, as a Supervisory Purchasing Agent, he planned to return to Portland, Oregon, as soon as possible. He decided to stay in Kent, however, until he achieved his promotion potential in that position. He states that in May 1982,

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he met with BPA officials in Portland to discuss job prospects, and he was advised that there would soon be a vacancy in the Small Purchase Section of the Division of Materials and Procurement in Portland. Mr. McGowan states further:

"I asked what my chances were and was advised that I was a highly qualified candidate with very high potential for selection, and if the first vacancy didn't work out, another surely would. I then asked if the Government would pay for my move and was told yes, because it would be in the best interest of the Government. Based on this discussion I was convinced a move to Portland was imminent. At this time I was not aware that I could not sell my residence before I was offered a position."

Mr. McGowan returned home and decided to sell his house as soon as possible, because of his prior experience which involved a delay in selling a residence and the financial burden of maintaining two residences. In May 1982, therefore, he listed his house in Kent with a real estate agent. Mr. McGowan's residence in Kent sold on July 26, 1982, which, in Mr. McGowan's words, was "much quicker than anticipated." The settlement of the sale was held on August 31, 1982.

The position description for the position in Portland was not approved until August 17, 1982, and the vacancy announcement was opened from September 27 to October 6, 1982. Mr. McGowan was selected for the position on November 9, and he was offered the position on November 17, 1982. A request for approval of change of station expenses in the interest of the Government was made on November 30, 1982. Mr. McGowan accepted the position and was transferred on December 12, pursuant to a travel order dated December 3, 1982.

The certifying officer questions Mr. McGowan's claim for real estate expenses in the amount of \$5,661.91 incurred in connection with the sale of his residence in Kent, Washington, on the basis of paragraph 2-6.1d of the Federal Travel Regulations which allows reimbursement only if the residence was the employee's residence at the time the employee was first definitely informed by competent authority of the transfer to the new duty station. The certifying officer points out that Mr. McGowan acted in good faith and was unaware that he might not be reimbursed

for sales expenses incurred in anticipation of his transfer. However, the question of Mr. McGowan's knowledge is in dispute since a management official states that she cautioned Mr. McGowan in late June or early July 1982, not to sell his home prior to receiving a firm offer of employment in Portland.

The certifying officer states that Mr. McGowan's claim has merit in view of the unusual circumstances presented, but requests our decision in view of the pertinent travel regulations and our prior decisions in similar cases.

#### OPINION

Under the authority of 5 U.S.C. § 5724a(a)(4) (1982), and the implementing Federal Travel Regulations, FPMR 101-7 (September 1981) (FTR), an employee who is transferred in the interest of the Government may be reimbursed for the expenses of sale of a residence at the old duty station and purchase of a residence at the new duty station. The regulation cited by the agency, FTR paragraph 2-6.1d, imposes an occupancy requirement that the dwelling for which selling expenses are claimed must be the employee's residence at the time the employee is first definitely informed by competent authority of the transfer to the new official station.

Our decisions have held that an employee may be reimbursed for moving and relocation expenses incurred prior to and in anticipation of a transfer of official duty station "if the travel order subsequently issued includes authorization for the expenses on the basis of a 'previously existing administrative intention clearly evident at the time the expenses were incurred by the employee, to transfer the employee's headquarters.' 48 Comp. Gen. 395 (1968). What constitutes a clear intention to transfer an employee depends on the circumstances in each case." 53 Comp. Gen. 836 (1974) (Emphasis in original.) See also Joan E. Marci, B-188301, August 16, 1977.

There is no clear evidence of administrative intent in this case to transfer Mr. McGowan at the time of settlement on his old residence in July 1982. In Mr. McGowan's own words, which we quoted above, the agency officials he met with in May 1982 were optimistic about his chances for selection in the fall. However, there was no definite commitment made concerning his selection for the position. We note in this connection that the new position in Portland was announced under BPA's merit promotion program,

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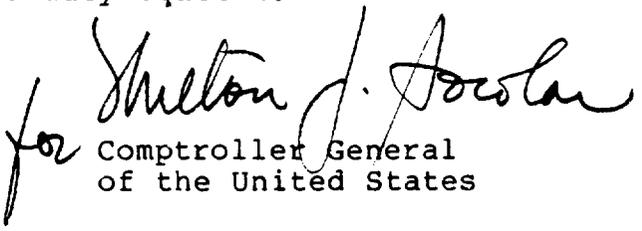
and we presume that no prior commitments could be made under the agency's competitive selection procedures.

The facts in this case are similar to those in Alan L. Olson, B-206239, April 26, 1982, where the employee anticipated selection for a position at a new duty station, placed his old residence on the market, and the residence sold quickly, prior to the issuance of a vacancy announcement that led to his selection for the position. We held in Olson that the real estate expenses incurred prior to the employee's selection for the position and formal notice of transfer could not be reimbursed in the absence of previously existing administrative intent to transfer the employee. See also James K. Marron, B-213610, April 18, 1984, 63 Comp. Gen. \_\_\_\_\_.

The facts in this case are to be contrasted with those decisions where we have found clear intention to transfer based on definite notification, even though it may be contingent upon formal approval of the selection or the obtaining of medical and security clearances. Travis D. Skinner, B-198880, October 21, 1980, and Stanley N. Hirsch, B-187045, August 3, 1977. Similarly, we have found clear intention to transfer the employee where there was notice that the employee's current position would be abolished or that all essential functions of an installation would be relocated. Orville H. Myers, 57 Comp. Gen. 447 (1978), and decisions cited therein.

Although a verbal notification of selection for a position may constitute a clear intention to transfer an employee, mere advice that an employee's prospects for selection are good is not sufficient. James W. Byron, B-199042, March 3, 1981, sustained on reconsideration, B-199042, March 25, 1982. Furthermore, as we held in Muriel V. Landry, B-198028, November 3, 1980, an employee cannot be assured of reimbursement for relocation expenses incurred before definite notice of transfer when the employee incurs those expenses in the absence of a travel order.

Accordingly, we hold that Mr. McGowan may not be reimbursed for the expenses incurred in connection with the sale of his residence at his old duty station.

*for*   
Comptroller General  
of the United States