

DECISION



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

FILE: B-216577

DATE: March 11, 1985

MATTER OF: Ellis Slater - Real Estate Expenses - Location
of Residence

DIGEST:

A transferred employee may not receive reimbursement for the expenses of selling a house owned by his wife where the house was not located at his old duty station, he did not reside there at the time he was notified of his transfer, he did not commute daily from the house to his duty station, and his marriage took place after he was notified of his transfer.

This decision is in response to a request from Conrad R. Hoffman, Director of the Office of Budget and Finance, Veterans Administration (VA), for our decision concerning the entitlement of Mr. Ellis Slater to reimbursement of house sale expenses. We hold that Mr. Slater is not entitled to reimbursement. The house for which he claims house sale expenses was not located at his old official station, he was not residing in the house when he was first notified of his transfer, he did not commute daily to his former duty station from the house, and although his wife owned and occupied it at the time he was notified of his transfer, their marriage did not take place until after he was notified of his transfer.

Mr. Slater was notified orally on September 17, 1982, and in writing on September 22, 1982, that he was to be transferred from the VA Medical Center in Tuscaloosa, Alabama, to the VA Medical Center in Gainesville, Florida. His reporting date was October 17, 1982. On October 3, 1982, Mr. Slater married Margaret Walker, who owned a house in Biloxi, Mississippi, which is approximately 235 miles from Tuscaloosa. Mr. Slater reports that after his marriage he returned to Tuscaloosa on October 4 to complete his assignments, process out, and move out of his apartment. On October 14 he returned to Biloxi to collect the household items he would need when he first arrived in Gainesville. Mr. Slater's wife remained in Biloxi to put the house on the market, resign her job and make preparations to join him in Gainesville. The house was sold and

closing took place on January 6, 1984. Mr. Slater subsequently submitted a claim for reimbursement of house sale expenses in the amount of \$4,540.30.

The Veterans Administration denied Mr. Slater's claim on the grounds that he did not acquire his interest in the property prior to the date he was definitely informed of his transfer to the new duty station and the house was not the one from which he commuted daily to and from his old duty station. Mr. Slater states that each time he sought advice on this matter he has been given a different reason as to why he is not eligible for reimbursement. He claims that he has researched the Federal Travel Regulations, FPMR 101-7 (September 1981) (FTR), and Comptroller General decisions and he has been unable to confirm these reasons but instead, found that the Comptroller General, on occasion, has allowed reimbursement to employees in situations outside the norm, and that he is in that category. Mr. Slater argues that he is entitled to reimbursement because his wife owned and occupied the house at the time he was first notified of his transfer, and because he could not occupy the house due to the short period of time between his marriage and his transfer.

The statutory authority for reimbursement of real estate expenses is found at 5 U.S.C. § 5724(a)(a)(4) (1982), which provides for reimbursement of the expenses for the sale of an employee's residence at the old duty station and the purchase of a residence at the new duty station. The regulations which implement that statute are found in Chapter 2, Part 6, of the FTR, paragraph 2-6.1 of which provides as follows:

"Conditions and requirements under which allowances are payable. To the extent allowable under this provision, the Government shall reimburse an employee for expenses required to be paid by him/her in connection with the sale of one residence at his/her old official station, * * *
Provided, That:

* * * * *

"b. Location and type of residence.
The residence or dwelling is the residence as described in 2-1.4i, * * *.

"c. Title requirements. The title to the residence or dwelling at the old or new official station, * * * is in the name of the employee alone, or in the joint names of the employee and one or more members of his/her immediate family, or solely in the name of one or more members of his/her immediate family. For an employee to be eligible for reimbursement of the costs of selling a dwelling * * * the employee's interest in property must have been acquired prior to the date the employee was first definitely informed of his/her transfer to the new official station.

"d. Occupancy requirements. The dwelling for which reimbursement of selling expenses is claimed was the employee's residence at the time he/she was first definitely informed by competent authority of his/her transfer to the new official station."

Paragraph 2-1.4i of the FTR defines official station or post of duty, including an employee's residence at that post of duty, as follows:

"Official station or post of duty.
The building or other place where the officer or employee regularly reports for duty. * * * With respect to entitlement under these regulations relating to the residence and the household goods and personal effects of an employee, official station or post of duty also means the residence or other quarters from which the employee regularly commutes to and from work. * * * (Emphasis added.)

Thus, the prerequisites for reimbursement of house sale expenses are listed above, and each must be met before reimbursement may be allowed. First of all, the house the employee sells must be located at the employee's old duty station and, as provided in FTR para. 2-1.4i, it must be the one from which the employee commutes on a daily basis to and from his worksite. Secondly, the employee must have been residing in the house for which he claims reimbursement of selling expenses at the time he

was notified of his transfer. Finally, title to the house must be in the name of the employee alone, in the joint names of the employee and a member of his immediate family or solely in the name of a member of his immediate family. This provision is qualified by the requirement that the employee must have acquired his interest in the property prior to the date he was definitely informed of his transfer.

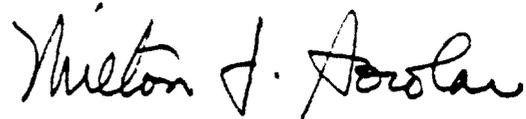
Mr. Slater's wife's house was not located at his old duty station, he did not commute from it and it was not his residence at the time he was notified of his transfer. However, as we have previously pointed out, Mr. Slater argues that since his wife owned the house at the time he was notified of his transfer, his situation satisfies the title requirement of the regulations. While FTR paragraph 2-6.1e provides that an employee may be reimbursed for house sale expenses where the title is in the sole name of a member of his immediate family, it also provides that an employee must have acquired an interest in the property prior to notification of his transfer. To interpret this regulation as Mr. Slater suggests would render the latter requirement meaningless, since any interest Mr. Slater had in the house was derivative from his wife's interest, and did not arise until after he had been notified of his transfer. Therefore, we believe that it is not sufficient that Mr. Slater's wife owned the house at the time he was notified of his transfer. This interpretation would be in keeping with what we believe to be the general intent of the regulations--to prevent an employee from taking actions after notification of a transfer to increase his entitlements.

It appears that when Mr. Slater made reference to certain Comptroller General decisions he might have had 53 Comp. Gen. 90 (1973) in mind. In that case we allowed reimbursement of house sale expenses to an employee who, after receiving notice of his transfer, married, and moved into his wife's house. In allowing reimbursement we held that the regulations were not intended to be applied in such a situation, where the employee had in fact established a bona fide residence in his wife's home prior to transfer.

The situation in 53 Comp. Gen. 90 can be distinguished from Mr. Slater's situation in that the employee in

that case resided for a significant period of time in a home which was located at his old duty station and he in fact commuted to and from that home, while Mr. Slater's house was located 235 miles from his old duty station, he resided there for only a few days, if at all, and did not commute from there to his old duty station. Additionally, in 53 Comp. Gen. 90, after initially receiving notice of his transfer, the actual transfer was then postponed for almost 6 months. Thus, that case is clearly distinguishable from Mr. Slater's situation and is not controlling.

Mr. Slater's claim is denied because the house was not located at his old duty station, he did not reside there at the time he received notification of his transfer, he never commuted daily from this house to his old duty station, and his marriage to the woman who owned it took place after he was notified of his transfer.

A handwritten signature in cursive script that reads "Milton J. Fowler".

Comptroller General
of the United States