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DECISION

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

FILE: B-216950 **DATE:** April 22, 1985

MATTER OF: Robert T. Celso - Real Estate Expenses - Return to Former Duty Station

DIGEST:

An employee was transferred back to a former duty station after a 12-year absence. He temporarily occupied a residence at that station which he had purchased 14 years before, but had rented out during most of that time. He then purchased another residence there and claims real estate expenses for this purchase. The agency disallowed his claim based on Warren L. Shipp, 59 Comp. Gen. 502 (1980), which held that, once an employee is officially notified of retransfer to a former duty station, reimbursement of real estate expenses is limited to those already incurred or which cannot be avoided. Shipp is hereby limited to situations where the employee is notified of retransfer to a former duty station before expiration of the time allowed for reimbursement of real estate expenses incident to the original transfer. Since this time period had expired years before the retransfer in the present case, Shipp does not apply and the claim is allowed.

This decision is in response to a request from J. R. Goldston, Jr., Finance and Accounting Officer, Corpus Christi Army Depot, Department of the Army. It concerns the entitlement of a civilian employee to be reimbursed for real estate expenses incurred incident to a permanent change of station in June 1981. We hold that the employee may be reimbursed for the following reasons.

BACKGROUND

The employee, Mr. Robert T. Celso, was transferred by the Army to the Corpus Christi Army Depot, Corpus Christi, Texas. He reported for duty there on June 15, 1981. Incident to that transfer, he was authorized reimbursement of real estate expenses.

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According to Mr. Celso, upon his arrival in Corpus Christi, he rented quarters for himself and his family, pending the purchase of a residence in the Corpus Christi area and the sale of his former residence at his old duty station. In July 1981, he was informed by the real estate broker handling the sale of his former residence that due to market conditions, there was virtually no chance that his residence could be sold before spring 1982.

Mr. Celso was not new to the Corpus Christi area. He had been stationed there previously and he owned a house in Corpus Christi which he had purchased in 1967 and had used then as his residence. However, he had not resided in that home since 1969, renting it out instead. Since the purchase of a new residence in Corpus Christi was dependent on the sale of his residence at his former duty station and since the tenant in the rental house vacated it during July 1981, Mr. Celso and his family moved into that house in July 1981, and remained there until September 1982. At that time, Mr. Celso obtained a second mortgage on the rental property and purchased another dwelling in Corpus Christi as his residence.

Mr. Celso filed a claim for $1,950.50, representing his expenses incident to the purchase of his new residence in Corpus Christi. Mr. Celso's claim was disallowed by the Army, based on our decision in Warren L. Shipp, 59 Comp. Gen. 502 (1980), in which we held that once an employee is notified of a transfer back to a former duty station, the Government's obligation to reimburse real estate expenses is limited to those already incurred or those which cannot be avoided.

DECISION

The statutory provisions governing reimbursement of residence transaction expenses of transferred employees are contained in 5 U.S.C. § 5724a (1982). The implementing regulations are contained in Chapter 2, Part 6 of the Federal Travel Regulations, FPMR 101-7 (May 1973) (FTR), and, to the extent applicable, restated in the September 1981 edition of the FTR.[1]

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[1] Incorp. by ref., 41 C.F.R. § 101-7.003 (1984).

Pursuant to paragraph 2-6.1e of the FTR, prior to its amendment by Supplement 4, August 23, 1982, a transferred employee had a maximum of 2 years in which to buy or sell a residence. The 1982 amendment to FTR paragraph 2-6.1e extended the 2-year period for an additional year when necessary.

As noted, the agency referred to our decision in Warren L. Shipp, cited above, as the basis for disallowance. The Shipp case involved the transfer of an employee from one duty station to another and then a transfer back to the original duty station approximately 1 year later. We recognized in that case that the initial transfer created a right in the employee to sell his residence at his original duty station and to be reimbursed those expenses since the transfer was in the interest of the Government. The record in that case showed that Mr. Shipp did not enter into a contract to sell that residence until after he had received official notice of his transfer back to his original station. However, he succeeded in selling that residence prior to his actual return to his former duty station. He submitted a claim for and was reimbursed the expenses of that sale. Since he no longer owned a residence at his original duty station, upon his actual return to that location he purchased a new residence there and sought reimbursement for the purchase expenses.

Shipp was submitted to this Office by the employing agency because of its doubts about the propriety of reimbursing Mr. Shipp for the purchase of a home at his new duty station under those circumstances. Although we authorized reimbursement because our cases then permitted it, we also reexamined those cases and changed our views prospectively. We applied the rationale of mitigation of costs based upon our decisions involving canceled transfers. In those decisions we analogized a canceled transfer to a transfer to another duty station and an immediate retransfer to the old duty station, and held that an employee whose transfer was canceled must mitigate his costs and do all he can to limit the expenses he incurs. Thus, reimbursement was limited to those expenses that the employee was legally obligated to pay at the time he was notified of his transfer back to his former duty station.

While not expressly stated therein, our Shipp decision was based on the fact that the period between an employee's original transfer from a particular duty station and the later transfer back to that duty station was relatively brief. Therefore, it was reasonable to assume that upon transfer back, the property remained a suitable residence for the employee. This assumption clearly is not reasonable when there is an intervening period of many years, as in the present case. To apply Shipp in such circumstances would go beyond the rationale and intent of that decision. Accordingly, the Shipp doctrine must be limited by an objective standard that can be reasonably applied by the appropriate accountable officers.

As set out above, there is a maximum time within which a transferred employee must complete his transfer-related real estate transactions if he is claiming reimbursement. As expanded by Supplement 4 to the FTR (August 23, 1982), the maximum time available is now 3 years. This limitation provides the basis for an objective standard to use in determining the applicability of our holding in Shipp. If an employee is notified of his or her transfer back to a former duty station after the time has expired for completion of real estate transactions which qualify for reimbursement incident to the original transfer, then the rationale in Shipp is not applicable and the employee may be reimbursed for the purchase of a residence at what is both his former and his new duty station, even if he owns another house there.

Establishment of a limited time for the application of the holding in Shipp, provides both employees and employing agencies with an objective standard governing reimbursement of real estate expenses when employees are returned to their former duty stations. This standard will enable agencies to practice prudent travel management policies, while allowing employees to return to former duty stations without undue burdens being placed on their real estate transactions, when such transfers to former duty stations are in the Government's interest.

Thus, since Mr. Celso was transferred back to Corpus Christi long after the time limit had expired for any reimbursement of real estate expenses connected with his

transfer away from Corpus Christi, he may be reimbursed for the expenses of purchasing a home there in September 1982. In that regard, the record shows that Mr. Celso reported for duty in June 1981. In April 1982 he requested and was granted a 1-year extension of the time limit contained in former FTR, paragraph 2-6.1e. In September 1982 he purchased his new residence.

Accordingly, since the extension of time was approved and he purchased a new residence within the then maximum 2-year period, Mr. Celso's expenses for its purchase in September 1982 are properly reimbursable, subject, of course, to administrative determination as to the propriety of the expense items claimed and the amounts involved.

Harry R. Van Cleve
for Comptroller General
of the United States