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

FILE: B-219292 **DATE:** September 17, 1985

MATTER OF: DuWayne A. Hansen

DIGEST:

> A transferred employee may not be reimbursed for the cost of selling his residence at his former duty station after the expiration of the three-year period allowed by applicable statute and regulations, nor may the employee be reimbursed for the cost of selling that residence incident to a subsequent transfer, as it was not the residence from which he commuted to work at the time of that transfer.

In this case we are asked to consider whether an employee may be reimbursed costs incurred in selling his residence at a former duty station more than 3 years after his transfer from that duty station.1/ We hold that the employee may not be reimbursed for the real estate sale expenses claimed incident to this or a subsequent transfer.

BACKGROUND

Mr. DuWayne A. Hansen, an employee of the Food Safety and Inspection Service, Department of Agriculture, was authorized a permanent change of duty station from Huron, South Dakota, to Portland, Oregon, by orders dated April 9, 1981. At the time of his transfer in May 1981 he placed his residence in Huron on the market for sale. When, after a year, the house had not been sold he was granted an additional 1-year period within which to complete the sale. Ultimately, Mr. Hansen was granted a third year to complete his real estate transactions. The 3-year period within which he was required to sell his South Dakota residence in order to qualify for reimbursement of real estate sale expenses expired in May 1984. However, due to the depressed real estate market at his former duty station, Mr. Hansen's South Dakota residence was not sold until February 1985.

1/ Mr. W. D. Moorman, an authorized certifying officer at the Department of Agriculture's National Finance Center, has requested an advance decision on the real estate expense claim submitted by Mr. DuWayne A. Hansen.

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In September 1984 Mr. Hansen was transferred from Portland, Oregon, to Billings, Montana. Mr. Hansen has requested that his entitlement to real estate sale expenses in connection with this subsequent transfer be applied to permit reimbursement for expenses incurred in selling his residence in Huron, South Dakota. The agency has requested an advance decision on whether Mr. Hansen may be reimbursed for real estate expenses in connection with the sale of his residence in Huron incident to either his transfer to Oregon or his subsequent transfer to Montana.

ANALYSIS

The reimbursement of Federal employees for residence sale expenses incurred incident to a transfer of duty station is governed by 5 U.S.C. § 5724a(a)(4) (1982) and Chapter 2, Part 6, of the Federal Travel Regulations (FTR), incorp. by ref., 41 C.F.R. 100-7.003 issued pursuant thereto. At the time of Mr. Hansen's transfer to Portland in 1981, FTR para. 2-6.1e required that the real estate transaction for which reimbursement is requested be completed within 1 year from the date the employee reports for duty at his new duty station, but allowed agencies to grant an additional year within which to complete the real estate sale or purchase transactions associated with that transfer. FTR para. 2-6.1e was amended effective October 1, 1982, by GSA Bulletin FPMR A-40, Supp. 4, to allow agencies to grant a third year in which to complete real estate transactions. The amendment was applicable to all employees whose time to complete real estate transactions had not expired prior to August 23, 1982. Robert R. Ormiston, B-209101, March 7, 1983. As indicated earlier, Mr. Hansen was granted a third year within which to complete the sale of his former residence.

While we do not question the fact that Mr. Hansen was unable to sell his residence within 3 years as a result of conditions that were essentially beyond his control, the provisions of the Federal Travel Regulations issued pursuant to 5 U.S.C. § 5724a (1982) have the force and effect of law and cannot be waived or modified by this Office or any agency concerned, even though an employee's inability to sell his residence may be due to difficulties in the housing market, financing constraints, or other factors. James H. Gordon, 62 Comp. Gen. 264 (1983); Robert R. Ormiston, B-209101, supra. Accordingly, since Mr. Hansen did not complete the sale of his former residence within the 3 years from the effective date of his transfer to Portland, Oregon, he is not entitled to reimbursement of the real estate expenses claimed incident to that transfer.

Mr. Hansen's request to use his real estate entitlement arising in connection with his subsequent transfer from Portland, Oregon, to Billings, Montana, to recover expenses incurred in selling his residence in Huron, South Dakota, must also be denied.

Under 5 U.S.C. § 5724a(a)(4) reimbursement for residence sale expenses is limited to costs of selling a residence located at the employee's old duty station incurred incident to transfer from that to a new duty station. For the purpose of determining whether the residence is at the employee's old duty station, the residence must be one from which the employee regularly commuted to and from work. FTR para. 2-1.4i. The regulations further require that the dwelling for which reimbursement of selling expenses is claimed have been the employee's residence at the time notification of transfer was received. FTR para. 2-6.1d.

Under the statute and regulations, Mr. Hansen's former residence in Huron, South Dakota, would not qualify as his residence at his old duty station for the purpose of entitlements arising from his transfer from Portland, Oregon, to Billings, Montana. Jack B. Dugwyler, B-200749, December 29, 1980. This is so even though there may have been very good reason for the fact that the residence was not sold within the 3-year period following his initial transfer from Huron, South Dakota, to Portland, Oregon. B-176687, October 13, 1972. The argument that a series of transfers, even within a relatively short period of time, provides a basis to extend the maximum period for sale incident to any one of those transfers was specifically considered and rejected in Robert C. Denz, B-185669, September 29, 1976. For those same reasons, there is no basis to substitute an employee's entitlement to real estate expenses in connection with an initial transfer for entitlements under a subsequent transfer.

Accordingly, Mr. Hansen may not be reimbursed for the real estate expenses claimed incident to his transfer to Portland, Oregon, or to his subsequent transfer to Billings, Montana.

Milton J. Socolar

Acting Comptroller General
of the United States