



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Timothy R. Glass - Real Estate Expenses -
Occupancy Requirements
File: B-226193
Date: January 4, 1988

DIGEST

An employee who bought a house and resided there on weekends while remodeling it may be reimbursed for real estate expenses related to its sale even though he was not using it as a residence from which he commuted to and from work on a daily basis at the time he was notified of his transfer. The record shows the employee would have made the house his permanent home but for his transfer in the interest of the government.

DECISION

This decision is in response to a request from a certifying officer with the Rocky Mountain Regional Office, National Park Service, for an advance decision concerning the entitlement of Mr. Timothy R. Glass to reimbursement of real estate expenses he incurred in connection with the sale of a house located at Grand Lake, Colorado, in the vicinity of the Rocky Mountain Regional Park. The certifying officer questions Mr. Glass' entitlement to reimbursement because Mr. Glass resided in the house only on his weekly 3 non-workdays and he did not regularly commute from that residence to and from work. Under the circumstances of this case and for the reasons outlined below, we hold that Mr. Glass' claim may be allowed.

Mr. Glass was an employee of the Rocky Mountain National Park and was living in government quarters within the park when, on May 15, 1984, he purchased a house. In a letter dated September 15, 1986, Mr. Glass states that he and his family did not move into the house at the time of purchase because after the snow melted in late May he found that the main water line had frozen and broken, there were roof and foundation problems, and water draining from a spring on the property had settled at the front entrance. Mr. Glass and his family decided to live in the house on his 3 days

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off each week while he made repairs. They moved enough furnishings into the house to make it livable during the repair period and made tentative plans to store the rest of their furniture at a warehouse until they could add on to the house.

In late August 1984, before the repairs could be completed, Mr. Glass was offered a job at the Glen Canyon National Recreation Area in Arizona. He accepted the position in September 1984 and was issued a travel authorization dated September 26, which did not specifically provide for reimbursement of real estate expenses but did provide that the transfer was neither primarily for the convenience of the employee nor at his request and that all allowances must be in accord with the Federal Travel Regulations. Mr. Glass moved on October 15, 1984.

In August 1985 Mr. Glass requested that the sale of his house be included as part of the contracted relocation services authorized by 5 U.S.C. § 5724c (Supp. III, 1985). The agency responded on September 2, 1986, that in order for Mr. Glass to be eligible for such service the residence in question must have been his actual residence at the time he was notified of his transfer. It pointed out that the house did not appear to be his residence because his leave and earnings statements from October 1984 showed that deductions were being made for his occupancy of government-owned quarters and the Government Bill of Lading showed that Mr. Glass' household goods had been picked up from those government quarters.

Mr. Glass responded to the Park Service's denial of his request in a letter dated September 15, 1986, in which he explained the circumstances we have outlined above and pointed out further that he had moved the furnishings he had in the house back to his government quarters for the convenience of the movers. He also stated that he had listed his house for sale in November 1984, had received an offer in August 1986, and expected to go to settlement on October 1, 1986. Mr. Glass submitted a claim for reimbursement of the expenses of that sale in the amounts of \$1,750 representing a broker's fee of 7 percent, which the National Park Service reports is customary for that area, \$197 for title insurance, \$5 for a notary fee for the deed of trust, \$28.18 for a phone bill and \$16.75 for express mail. It is this claim upon which the National Park Service has requested us to rule.

The statutory authorization for the reimbursement of expenses of the sale of an employee's residence at his

old duty station is contained in 5 U.S.C. § 5724a(4) (1982). Section 2-6.1d of the Federal Travel Regulations (FTR) (FPMR 101-7) (Sept. 1981), implementing that statute, provides that reimbursement of the expenses of selling the old residence may be made provided the dwelling for which reimbursement of selling expenses is claimed was the employee's residence at the time he was first definitely informed by competent authority of his transfer to the new official station. The term "residence" is defined in paragraph 2-1.4 of the FTR as "the residence or other quarters from which the employee regularly commutes to and from work."

Ordinarily, a literal interpretation of the above regulation would preclude any reimbursement of selling expenses of a dwelling not used as a residence from which the employee commutes on a daily basis. However, we have allowed reimbursement on a case-by-case basis where there has been a substantial compliance with the occupancy requirement of FTR paragraph 2-6.1d or where circumstances beyond the control of the employee prevent his occupancy of the dwelling.

In 47 Comp. Gen. 109 (1967), we allowed a transferred employee to be reimbursed for the expenses of the sale of a house in which his family lived and to which he commuted only on weekends because the employee was unable to find suitable housing near his official duty station. Our decision in B-165839, Jan. 31, 1969, involved an employee who returned from an overseas post to Washington, D.C., for duty and allowed the tenant who was renting his house to stay until that tenant was transferred. During this period of time the employee was notified of a transfer from Washington to Hawaii. We allowed reimbursement of the expenses of the sale of his residence even though he was not occupying it at the time he was notified of his transfer because he held title to it at that time and had made arrangements to reoccupy it.

Similarly, we have allowed reimbursement of expenses where the employees had never lived in the residences sold. The employees involved in B-168186, Nov. 24, 1969, and B-168818, Feb. 9, 1970, had entered into construction contracts prior to their notification of permanent change-of-station transfers. We held that they were entitled to reimbursement for selling expenses since they were unable to cancel the purchase contracts and were precluded from establishing residency in the house because of their transfers. Additionally, we held in 54 Comp. Gen. 67 (1974) that an employee who entered into a contract for the purchase of a residence at his old duty station but did

not occupy the residence because of a transfer could be reimbursed the costs of selling the residence since he was precluded from occupying the residence due to his transfer, an act of the government.

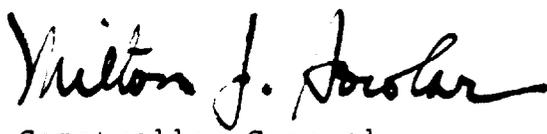
In considering Mr. Glass' case the National Park Service became aware of B-168186 and 54 Comp. Gen. 67 but was concerned that Mr. Glass' situation did not fall within the confines of those cases. The certifying officer has pointed out that unlike the employee in B-168186, who entered a construction contract because no suitable housing was available, Mr. Glass was occupying government quarters at the time he purchased his house and apparently did so purely as a matter of personal preference. Mr. Glass' situation was also distinguishable from the employee in 54 Comp. Gen. 67, who had made arrangements to terminate the lease on the apartment he was occupying. Mr. Glass had not indicated that he intended to leave his government quarters at any definite time although the certifying officer states that it appears to have been Mr. Glass' intention to leave his government quarters at some point.

It is our view that Mr. Glass' decision to purchase a home rather than continuing to reside in government quarters should not affect his entitlement to reimbursement, especially since the Park Service has informed us that there is no requirement for employees at the Rocky Mountain National Park to reside in those quarters. Although it would be less costly for the government if all employees lived in rental apartments and thus did not incur the costs associated with the sale and purchase of residences, there is no such requirement and the FTR provide for reimbursement of costs that result from what is often simply an exercise of personal preference.

Nor do we think it necessary for Mr. Glass to show that he had set a definite time for the termination of his occupancy of government quarters. We are satisfied that his actions show definite intent to move into his newly purchased home which was prevented by his transfer in the interest of the government. As a result, we believe that the circumstances of Mr. Glass' situation show, as in our other cases where we allowed exceptions to the general occupancy requirement for reimbursement of real estate expenses, that there was substantial compliance with that requirement. As a result, Mr. Glass may be reimbursed for the expenses he has claimed.

In that connection, the certifying officer expressed the view that Mr. Glass' claim of \$28.18 for a phone

bill and \$16.75 for express mail would not be reimbursable. Mr. Glass has explained that the phone calls related to the closing on his home, and the express mail charge was for mailing back the purchase contract on the house. Each of these charges may be reimbursed as part of the miscellaneous expense allowance authorized by FTR paragraph 2.3-1. We have permitted reimbursement under the miscellaneous expense allowance when the expenses relate to an item which would be an allowable expense. Thus, we have allowed as real estate-related expenses, the cost of telegrams, telephone calls and certified mail necessary for real estate transactions. See B-189140, Nov. 23, 1977; B-185160, Jan. 2, 1976; and B-203009, May 17, 1982.

for 
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