



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Donald R. Stacy - Permanent Change of Station -  
Relocation Expense Benefits

File: B-229457

Date: May 6, 1988

### DIGEST

1. An employee stationed in New Orleans was transferred to Baltimore. The only residence he owned was located in Atlanta where his family lived. His request to be reimbursed the expense of selling his Atlanta residence is denied. Under paragraphs 2-1.4i and 2-6.1 of the Federal Travel Regulations, in order for a residence to qualify for sales expense reimbursement, the employee must live there and regularly commute to and from his worksite from that residence. The record shows that he rented quarters in New Orleans from which he commuted to work daily and only occupied the Atlanta residence on weekends and holidays.

2. An employee stationed in New Orleans was transferred to Baltimore. He was granted a 1-year extension of time to purchase a residence in the Baltimore area, but the agency denied an extension of time to initiate the travel of his immediate family and ship his household goods. That action was erroneous and has now been corrected. Under paragraph 2-1.5a(2) of the Federal Travel Regulations, an employee who has been granted an extension of time to complete approved real estate transactions is automatically entitled to an equal extension period to initiate family travel and ship household goods.

3. An employee stationed in New Orleans was transferred to Baltimore and was authorized the maximum 3-year period, including a 1-year extension, to purchase a residence in the Baltimore area, initiate the travel of his immediate family, and ship his household goods. Because of unusual circumstances, the employee seeks an unlimited extension period within which to complete all aspects of his permanent change-of-station move. His request is denied since the maximum time limit imposed by paragraph 2-6.1e of the Federal Travel Regulations has already been granted and there is no basis upon which an additional extension period

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may be allowed. Those regulations have the force and effect of law and may not be waived or modified by an agency.

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## DECISION

This decision is in response to correspondence from Mr. Donald R. Stacy. He requests further consideration and review of his entitlement to receive certain relocation benefits incident to a permanent change of station in 1986. The matter was the subject of our Claims Group settlement Z-2865476, December 30, 1987, which limited his entitlement. We sustain our Claims Group action for the following reasons.

## BACKGROUND

Mr. Donald R. Stacy, who had been employed in the private sector and was residing in Atlanta, Georgia, was appointed in early 1984 by the United States Equal Employment Opportunity Commission (EEOC) to a position in the EEOC's New Orleans, Louisiana, office. Notwithstanding the distance involved, he chose not to relocate his family to the New Orleans area. The reason for not doing so involved an ongoing, long-term highway renovation project abutting his residential property in Atlanta. It was Mr. Stacy's view that if he attempted to sell his residence before the work was completed and the noise level was stabilized by the erection of a sound barrier, he would incur a heavy financial loss. Mr. Stacy rented quarters in New Orleans from which he commuted daily to his permanent duty station during the workweek, and he traveled to Atlanta on the weekends and holidays to be with his family.

In 1986, while still stationed in New Orleans and commuting daily to his workplace from those rented quarters, Mr. Stacy was transferred by EEOC to its office in Baltimore, Maryland, with a reporting date of February 20, 1986. Among the expense reimbursements authorized in his travel authorization were travel expenses for himself and his immediate family, shipment of household goods and real estate expenses, but only those in connection with purchase of a residence in the Baltimore area. He was not authorized the expenses of selling a residence since the only residence he owned was the one in Atlanta, Georgia.

Mr. Stacy subsequently requested the right to be reimbursed real estate expenses for his Atlanta residence. It was denied by the EEOC in a memorandum dated February 26, 1986. The basis for denial was that, since his Atlanta residence was not the residence from which he regularly commuted to his worksite in New Orleans at the time of his transfer to

Baltimore, it did not qualify for real estate sales expense reimbursement.

By memorandum dated September 8, 1987, Mr. Stacy, noting that the initial 2-year period for relocation expenses would expire in February 1988, requested a 1-year extension, again focusing on the need for adequate time to sell his Atlanta residence. In response, the EEOC, by memorandum dated October 6, 1987, reiterated to Mr. Stacy that his Atlanta residence did not qualify under the regulations as his commuting residence in connection with his duty station in New Orleans. The memorandum went on to say that he could be granted an extension of time up to 1 additional year to purchase a residence in the Baltimore area if he made that specific request. The EEOC memorandum also noted that an extension of time could not be granted beyond the second anniversary of his Baltimore office reporting date (February 20, 1986) for the family travel and transportation of household goods portion of his transfer.

Mr. Stacy appealed EEOC's refusal to allow real estate expenses for his Atlanta residence to our Claims Group. Our Claims Group, by settlement dated December 30, 1987, sustained the agency action. Mr. Stacy now appeals that settlement. He also requests that he be granted an unlimited period of time to move his family and household goods from Atlanta to Baltimore and purchase a residence there.

#### OPINION

##### Real Estate Expenses for Atlanta Residence

The provisions of law governing the rights of an employee to be reimbursed expenses incident to a transfer of duty station are contained in 5 U.S.C. §§ 5724 and 5724a (1982) and regulations issued pursuant thereto. Those statutorily authorized regulations are contained in chapter 2, Federal Travel Regulations (FTR), incorp. by ref., 41 C.F.R. § 101-7.003 (1986), as amended by GSA Bulletin FPMR A-40 (Supp. 4, Aug. 23, 1982). With regard to the sale of Mr. Stacy's Atlanta residence, we note that paragraph 2-6.1 of the FTR provides in part:

"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:

. . . . .  
"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 duty station."

The term "official station" used above is defined in FTR para. 2-1.4i to mean:

"i. Official station or post of duty. The building or other place where the office or employee regularly reports for duty. . . . With respect to entitlement under these regulations relating to the residence . . . 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."

Paragraphs 2-1.4i and 2-6.1 of the FTR, when read in combination, establish the requirement that in order for an employee to be reimbursed the expenses of the sale of a residence in connection with a permanent change of station, he must actually reside there at the time of transfer notice and it must be the place from which he commutes to and from work at his old permanent duty station.

Mr. Stacy argues that his pattern of traveling from New Orleans to Atlanta and return on weekends establishes that he regularly commuted from his Atlanta residence to his duty station in New Orleans. He also argues that if his Atlanta residence is determined not to qualify under the regulations as the one from which he regularly commuted to and from work at the time of his transfer from New Orleans to Baltimore, then the governmental delay in completing the highway sound barrier which has prevented him from selling his Atlanta residence should be recognized as a valid exception to that rule, similar to the exceptions permitted in several decisions rendered by this Office.

As to Mr. Stacy's first argument, the inability of an employee to sell a residence incident to a transfer, regardless of the reasons, is not relevant to the issue of whether that residence qualifies for sales expense reimbursement. Even if Mr. Stacy was able to sell his Atlanta residence after his transfer from New Orleans to

Baltimore, it would not qualify under the laws and regulations for real estate sales expense reimbursement.

The salient term used in the FTR to describe the relationship between an employee's post of duty or worksite and the residence or dwelling used for commuting purposes is that the commuting must be done "regularly" between that residence and the employee's post of duty. We do not view Mr. Stacy's weekend trips to Atlanta as satisfying the requirement that the Atlanta residence must be the one from which he "regularly" commuted to his worksite as that term is used in FTR para. 2-1.4i. Our Office has consistently held that where an employee maintains and commutes from living accommodations in the near proximity of his duty station on a daily basis and only travels on weekends and holidays to a residence where his family lives, that family residence does not satisfy the requirement of para. 2-1.4i of the FTR so as to permit reimbursement for the expenses of selling that family residence when the employee is transferred. See Bernard L. Singer, B-202758, Feb. 22, 1982, and decisions cited; William T. Cook, B-217518, July 23, 1985; Gary M. Sudhoff, B-227786, Mar. 10, 1988.

As to Mr. Stacy's second argument, the decisions of this Office referred to by him which recognize exceptions to the FTR provision requiring that the residence to be sold be the residence from which the employee regularly commuted to his permanent duty station at the time of transfer, do not apply to him directly or in principle. In each of these cases, the employees involved had been living in their residences and commuting from there to their permanent duty stations on a daily basis. The events which caused them to be absent from their residences at the time of their transfer and which were recognized as valid exceptions to the rule were that the nonoccupancy was temporary and not related to employment at their permanent duty stations. See Joseph L. White, 58 Comp. Gen. 208 (1979) (illness of spouse); Gerald C. Newmeyer, B-193808, Oct. 4, 1979 (residence destroyed by fire); Patrick V. Vail, B-196294, June 1, 1981 (transfer upon return from overseas assignment); Jesse A. Greer, Nov. 7, 1977 (employee barred from residence by court order pending his divorce).

In the present case, Mr. Stacy's first federal employment official duty station was in New Orleans. Since he never regularly commuted from his Atlanta residence to that permanent station worksite, there is no basis upon which an exception can be made to this rule in his case. Therefore, our Claims Group action denying real estate expense reimbursement for his Atlanta residence is correct and is sustained.

Time Limitation for Settlement on Baltimore Residence.

With regard to the time limitations for incurring relocation expenses, FTR para. 2-6.1e allows 2 years from the date the employee reports to duty at the new duty station for the employee to sell and purchase real estate, with an extension of up to 1 additional year. Similarly, FTR para. 2-1.5a(2), which governs the time limit for all travel and transportation to the employee's new duty station, provides, in part:

"(c) The 2-year period shall be extended for an additional period of time not to exceed 1 year when the 2-year time limitation for completion of residence transactions is extended under 2-6.1e."

In combination, these provisions authorize the automatic extension of time for the employee's family to initiate travel to the new duty station and ship their household goods at government expense to equal the extension period authorized for completion of an approved residence transaction.

In the present case, Mr. Stacy reported for duty in Baltimore on February 20, 1986. This meant that his initial period within which he was authorized to purchase a residence in the Baltimore area and initiate all other aspects of his family's portion of his permanent change-of-station move would have expired on February 20, 1988. Based on Mr. Stacy's request for an extension of time, the agency appropriately granted him a 1-year extension to February 20, 1989, in order to permit him to purchase a residence in the Baltimore area. Although the agency initially denied him a coequal extension of time to move his family and household goods to the Baltimore area, that matter has been corrected. By memorandum dated February 2, 1988, Mr. Stacy was informed by the EEOC that his entitlement to have his family begin travel and ship his household goods to his new duty station has been extended to February 20, 1989.

Because of the complex nature of Mr. Stacy's situation and the volume of correspondence received here regarding his assertions, we informally communicated with him to assure ourselves that all aspects of his claim were completely understood by this Office so that they could be addressed in this decision. Although he appreciated that the period within which to move his family and ship his household goods had been extended until February 20, 1989, he expressed the opinion that it was insufficient. It is Mr. Stacy's view

that the Federal Travel Regulations are for guidance only and any extensions of time to conclude all aspects of his permanent change of station to Baltimore should be without limitation. The basis for his position is that the federal government, acting through the State of Georgia, is responsible for the highway construction delays and his inability to sell his Atlanta residence. Therefore, he argues that he should be permitted as much time as may be required for the highway renovation project to be completed and the sound barriers erected, plus whatever additional time may be required thereafter to sell his residence. He requests that we specifically address this issue in the decision and, if our ruling is adverse, inform him of his appellate rights.

The law governing relocation benefits for transferring federal employees is contained solely in subchapter II of chapter 57, title 5, United States Code (1982). The FTR provisions governing reimbursement for real estate transactions are specifically authorized by those code provisions. As such, they have the force and effect of law and may not be waived or modified by an employing agency. Charles W. Miller, 60 Comp. Gen. 295 (1981); Ralph D. Christensen, B-226341, Dec. 29, 1987; David C. Funk, B-227488, Dec. 29, 1987. Therefore, such limitations of time specified in those regulations may not be abrogated, regardless of the circumstances.

Mr. Stacy has been authorized the maximum 3-year period in which to purchase a residence in the area of his present duty station in Baltimore and the same period of time to initiate the travel of his immediate family and ship his household goods to that duty station. Under the regulations, he may not be granted additional time to complete his permanent change of station at government expense.

In summary, under the applicable law and regulations, Mr. Stacy may be reimbursed expenses of purchasing a residence in the Baltimore area if settlement is concluded on or before February 20, 1989. He is also entitled to transport his family and ship his household goods at government expense from Atlanta to Baltimore, if that travel and shipment is initiated on or before February 20, 1989. However, Mr. Stacy may not be reimbursed expenses for

selling his Atlanta residence, regardless of when it may be sold, since it does not qualify under the regulations as the residence from which he regularly commuted to and from his worksite in New Orleans.

Mr. Stacy's only avenue to seek further review of his claim is a lawsuit in the United States Claims Court. See 28 U.S.C. § 1491 (1982). See also in this connection 28 U.S.C. § 2501 governing the time within which an action may be filed in that court.

A handwritten signature in cursive script, reading "Milton J. Auster".

Acting Comptroller General  
of the United States