



Comptroller General
of the United States

122596

Washington, D.C. 20548

Decision

Matter of: Kenneth E. James
File: B-256002
Date: June 2, 1994

DIGEST:

An employee signed a contract in September 1990 for a new residence to be constructed near the location which eventually became his new permanent duty station. On April 30, 1991, the agency notified him of possible transfer, and on May 14, 1991, he settled on his new residence. The agency eventually transferred the employee on April 22, 1992. Employee's claim for real estate expense reimbursement is denied since there was no existing administrative intent to transfer the employee at the time he became obligated under the construction contract to purchase the new residence.

DECISION

Mr. Kenneth E. James appeals our Claims Group's Settlement Z-2868437, August 9, 1993, which denied his claim for reimbursement of real estate expenses for a newly constructed residence. The basis for that ruling was that there was no clear evidence of administrative intent to transfer Mr. James as of the date he executed the construction contract on his new residence and, thus, it was concluded by the Department of Veterans Affairs that the purchase of his newly constructed residence was not incident to his transfer. For the following reasons, we affirm our Claims Group's action and deny Mr. James's claim.

The record shows that on September 14, 1990, Mr. James, an employee of the Department of Veterans Affairs, stationed in Palo Alto, California, entered into a contract for the construction of a residence in Wilsonville, Oregon, which is near Portland, Oregon. By memorandum dated April 30, 1991, a Department of Veterans Affairs official stated that Mr. James should be transferred to a position in Portland, Oregon, as soon as the necessary administrative procedures could be accomplished. On May 14, 1991, Mr. James went to settlement on his new residence and incurred \$3,099.60 in real estate expenses. On December 18, 1991, Mr. James signed a 12-month service agreement, and reported for duty

to his newly established position in Portland, Oregon, on April 22, 1992.

The Department of Veterans Affairs's administrative report notes that since there was no administrative intention to transfer Mr. James at the time he signed the construction contract for his new residence, his purchase of the new residence was not incident to his transfer. Further, it noted that Mr. James apparently was considering other job offers outside of the Department of Veterans Affairs, and that construction of the new residence would have occurred whether or not Mr. James had been transferred by the Department of Veterans Affairs.

In his appeal, Mr. James argues that real estate expenses in connection with the purchase of a residence are incurred at settlement and are not determined until that time. Since he did not settle on his new residence until May 14, 1991, which was after the memorandum showing the administrative intent to transfer him was issued (April 30, 1991), he is entitled to be reimbursed those expenses.

In cases involving expense reimbursement claims for the purchase or sale of a residence where the purchase or sale occurred prior to and in anticipation of the issuance of transfer orders, the issue is whether there was an existing administrative intent to transfer the employee at the time he was committed to the sale of the residence at the old duty station or purchase of a residence in the vicinity of the new duty station. We have held that an employee may be reimbursed for those real estate expenses only if there is clear evidence of an existing administrative intent to transfer him when he executes a contract to buy or sell a residence, thereby incurring a financial obligation under the contract. Bernard J. Silbert, B-202386, Sept. 8, 1981. Thus, only where it is found that there is a clear administrative intent to transfer an employee before he contracts to purchase a residence may real estate expenses incurred incident to that purchase be reimbursed. H. Michael Hawkins, B-189161, Apr. 26, 1978.

In the present case, while Mr. James disputes that the earliest date of notice to him regarding the agency's intent to transfer him was the memorandum of April 30, 1991, he admits having first discussed the matter of his transfer earlier that same month. In view of the fact that he entered into the construction contract in September 1990, seven months prior to that time, there is no basis upon which his claim may be allowed.

Accordingly, we affirm our Claims Group's Settlement and we deny Mr. James's claim.

/s/ Seymour Efros
for Robert P. Murphy
Acting General Counsel

OGC Form 500 (Rev 3/92)

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SECTION II: INITIAL DISTRIBUTION

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Mr. Joseph McCann OGC/GGD Room 7870	Ms. Paula Porter Claims Group/GGD Room 5047

Date: June 2, 1994
To: Director, GGD - Claims Group
From: Acting General Counsel - Robert P. Murphy
Subject: Kenneth E. James, B-256002-O.M.

We are returning Claims file, Z-2868437, along with a copy of our decision of today, B-256002, which denies Mr. James's claim.

Attachments - 2