



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** David M. Whetsell

**File:** B-257855

**Date:** August 22, 1995

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### DIGEST

1. Because of his wife's medical condition, a transferred employee purchased a residence that was not within commuting distance of the new duty station. The new residence is further (113 miles) from his new duty station than his old residence (86 miles). He commutes weekdays to his new duty station from a nearby apartment. Under these circumstances, he may not be reimbursed for real estate expenses incurred in purchasing the new residence, because the purchase of the new residence is not reasonably related to his transfer, and does not fall within the exception for family medical conditions recognized in our decision in Mark S. Alcorn, B-239108, Mar. 15, 1991.

2. A transferred employee went to settlement on a residence within 2 years of the date he reported for duty at his new station. He thereafter sought an extension of time to complete all aspect of his transfer. It was approved and he moved his household goods to the new residence under the commuted rate system approximately 2-½ years after he reported for duty at his new station. His household goods transportation claim is denied. Under 41 C.F.R. § 302-1.6(c) in combination with 41 C.F.R. § 302-6.1(e)(2)(i), where the employee requires more than 2 years to complete residence transactions, if approved, travel, as well as transportation of household goods, may be delayed an equal additional period of time. However, there is no independent right under the regulation to delay movement of household goods beyond 2 years where the residence transactions have been completed within the 2-year period.

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### DECISION

This decision is in response to a request from the Savannah River Operations Office, Department of Energy (DOE).<sup>1</sup> It concerns the entitlement of an employee to be reimbursed for residence purchase expenses and the movement of household

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<sup>1</sup>Mr. Paul E. Anderson, Director, Finance Division.

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goods incident to a permanent change of station in December 1989. We conclude that he may not be reimbursed.

Mr. David M. Whetsell was an employee of the Department of the Navy stationed at the Naval Shipyard in Charleston, South Carolina. He received an interagency transfer to the Savannah River Operations Office of the DOE in Aiken, South Carolina, and reported for duty there on December 9, 1989.

The file shows that Mrs. Whetsell suffered from a severe medical condition and was under medical care. Because of these conditions, Mrs. Whetsell was temporarily residing in furnished rental quarters in Greenville, South Carolina, at the time of Mr. Whetsell's transfer. Mr. Whetsell was temporarily residing with his parents in the Charleston area and commuted to his job at the shipyard from there. Following his transfer to Aiken, Mrs. Whetsell joined Mr. Whetsell there and occupied temporary quarters with him in and about the Aiken, South Carolina - Augusta, Georgia, area. However, Mrs. Whetsell's medical condition made it impossible for her to remain in the area and she returned periodically to the rental quarters in Greenville.

Based on advice from Mrs. Whetsell's physician, they eventually purchased a condominium in Folly Beach, South Carolina, and went to settlement on November 15, 1991, and undertook significant renovations. The Whetsells transported their household goods from storage in Greenville to Folly Beach during the period May 25-28, 1992, moved into their condominium shortly thereafter.

The new location in Folly Beach was 113 miles from Mr. Whetsell's official duty station in Aiken. Mr. Whetsell lives in an apartment in Aiken from which he commutes to his job during the workweek and, he travels to Folly Beach on holidays and weekends.

Mr. Whetsell filed vouchers claiming real estate expenses and the cost of moving his household goods to Folly Beach from Greenville. The certifying officer is not certain that the Folly Beach residence qualifies for expense reimbursement under the Federal Travel Regulations, since it is not within reasonable commuting distance to the new duty station.

Additionally, the certifying officer questions whether Mr. Whetsell can be reimbursed for the cost of transporting his household goods. He points out that even though Mr. Whetsell was authorized to move his goods under the commuted rate system and did rent two U-Haul trucks to move his goods, he did not obtain the required weight certificates to support his \$4,439.42 transportation claim. The only information Mr. Whetsell provided was the van capacity, a detailed listing of the household goods moved, and a statement from the manager of the storage company in the Charleston-Folly Beach area that received the goods for temporary

storage that he observed that the goods were properly loaded on the vans when the goods arrived there. The certifying officer asks whether that information is legally sufficient to establish a basis for reimbursement.

#### Residence transaction

The statutory provisions governing reimbursement for real estate expenses incident to a transfer are contained in 5 U.S.C. § 5724a(a)(4) (1988) and implementing regulations contained in Chapter 302, Parts 1 and 6 of the Federal Travel Regulation (FTR).<sup>2</sup> Section 302-1.4(j) of the FTR<sup>3</sup> defines official station or post of duty as the building or place where the employee regularly reports for duty and the residence from which the employee regularly commutes to and from work. With respect to the purchase of a residence in connection with a transferred employee's new duty station, we have consistently held that the term "regularly commutes" contemplates commuting on a daily basis, not just on weekends or occasionally during the month.<sup>4</sup> Thus, expenses incurred in purchasing a residence from which the employee does not regularly commute do not qualify under the regulation for reimbursement. Roger W. Montague, B-251211.2, Mar. 9, 1994.

In a 1991 decision, Mark S. Alcorn, B-239108, Mar. 15, 1991, we recognized medical necessity as an appropriate exception to the rule. In that decision, we allowed residence purchase expenses even though the new residence was not within a reasonable commuting distance of the new duty station.<sup>5</sup> We concluded that if the agency determines that the medical condition was such to justify the employee's action, residence purchase expenses could be reimbursed.

The Alcorn decision addressed a factual situation that is different in critical respects from the case presented here. In Alcorn, the employee was transferred from Arizona to South Dakota, and purchased a residence in a city offering specialized medical services required by his wife on an ongoing basis, located 172 miles from the new duty station. In that case, a move from Arizona was dictated by the change of duty station, and thus the move is clearly incident to the transfer.

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<sup>2</sup>41 C.F.R. Chapter 302, Parts 1 and 6 (1989).

<sup>3</sup>41 C.F.R. § 302-1.4(j) (1989), currently 41 C.F.R. § 302-1.4(k) (1993).

<sup>4</sup>Mark S. Alcorn, B-239108, Mar. 15, 1991, and decisions cited.

<sup>5</sup>Mark S. Alcorn, B-239108, supra.

In the present case, the Whetsells moved to Folly Beach not because of Mr. Whetsell's transfer. They moved there because of Mrs. Whetsell's condition. Her attending physician certified that she should reside near the ocean with its prevailing breeze and as far away from industry as possible. Thus, as we view it, the Whetsell's move to Folly Beach or to an equivalent coastal location would have been necessary regardless of Mr. Whetsell's transfer, and consequently the expenses of purchasing of the Folly Beach residence were not incurred incident to his transfer. To come within the exception allowed in Alcorn, the expenses in question must first be determined to bear some reasonable relationship to a permanent change of station. Such is not the case where the purchase in question places the employee at a greater distance from his new duty station than the previous residence. Accordingly, Mr. Whetsell may not be reimbursed for these expenses.

#### Transportation of Household Goods

With regard to the transportation of the Whetsell's household goods, we do not reach the question posed to us by the certifying officer, who asks whether information presented by Mr. Whetsell in place of the required weight certificates is legally sufficient to establish a basis for reimbursement. We instead decide the issue on other grounds. Mr. Whetsell cannot be reimbursed because the extension of time granted to Mr. Whetsell by the agency for moving household goods does not meet the requirements of the applicable regulations. Section 302-1.6 of the FTR<sup>6</sup> provides, in part, that the beginning of that transportation shall not exceed 2 years from the effective date of the employee's transfer, subject to certain exceptions. One such exception is provided for in subsection 302-1.6(c) and states:

"(c) The 2-year period shall be extended . . . when the 2-year time limitation for completion of residence transactions is extended under § 302-6.1(e)."

Section 302-6.1(e)(2) of the FTR<sup>7</sup> provides, in part:

"(2)(i) Extension of time limitation. Upon an employee's written request, the 2-year time limitation for completion of . . . purchase . . . transactions may be extended. . . ."

The concept embodied by these provisions is that where an employee is unable to complete the sale of his residence in connection with his old duty station or complete the purchase of his residence in connection with his new duty station

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<sup>6</sup>41 C.F.R. § 302-1.6 (1989).

<sup>7</sup>41 C.F.R. § 302-6.1(e)(2) (1989).

within 2 years and, thus, requires additional time, but not to exceed 1 year, the beginning of all travel and transportation of household goods to the new residence may be delayed for an equal additional period. However, there is no independent right under the regulation whereby an employee may delay transportation, including shipment of household goods, beyond 2 years where the need to extend the time for residence purchase and sale transactions is not involved.<sup>8</sup> Residence purchase or sale completion is identified in the regulation as being the date of settlement. The term "settlement" refers to the specific event where the price is paid to the seller and title to the property is conveyed to the purchaser.<sup>9</sup>

In Mr. Whetsell's case, he and his wife settled on their condominium in Folly Beach on November 15, 1991. That date was within 2 years of the date he reported for duty at Savannah River (December 9, 1989). On December 4, 1991, Mr. Whetsell requested an extension of time "for completion of residence and transportation transactions." Although the extension was approved, that approval was erroneous because the residence purchase transaction had already been completed. Therefore, since they did not transport their household goods from Greenville to Folly Beach until approximately 2-½ years after he reported for duty at Savannah River (the Memorial Day weekend in 1992), Mr. Whetsell may not be reimbursed the cost of that move.

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

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<sup>8</sup>Lawrence P. Zatkoff, B-231688, Dec. 2, 1988.

<sup>9</sup>Harry T. Turman, B-251716, Feb. 10, 1993, citing to John E. Kerr, B-222130, Aug. 22, 1986.