

DECISION

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

FILE: B-183449

DATE:

MAY 29 1975

MATTER OF:

Percy Daniels--Real estate allowances upon return
from Alaska position

DIGEST:

Employee located in Alaska whose position was abolished was returned to continental United States for separation by retirement. His claim for reimbursement of real estate expenses in selling his Alaska residence is not allowable since pertinent statutes and regulations permit such reimbursement only when there is a permanent change of duty station. Return from Alaska for purpose other than assuming a new Government position does not constitute a permanent change of station. Returning employees in these circumstances are considered as in the same category as "new appointees" under 5 U.S.C. 5724(d), and new appointees are not eligible for real estate allowances.

This matter concerns an appeal from settlement action by our Transportation and Claims Division which denied the claim of Percy Daniels, a former employee of the Federal Aviation Administration stationed in Anchorage, Alaska, for reimbursement of real estate expenses upon his retirement and return to the continental United States.

The record indicates that Mr. Daniels retired after his Alaska position was abolished. Failing to receive another offer of Federal employment, he sold his residence in Alaska and returned to the continental United States for separation by retirement. Mr. Daniels has cited several provisions of the Federal Travel Regulations (FTR), FPMR 101-7 (May 1973) in support of his position that his return from Alaska to the continental United States should be considered the same as a permanent change of station so as to entitle him to reimbursement for real estate expenses incurred in selling his residence in Anchorage.

We have reviewed the FTR provisions cited by Mr. Daniels, but cannot agree that they provide any basis for allowing his claim. The real estate expenses claimed are authorized under 5 U.S.C. § 5724a (1970) which provides in part:

"(a) Under such regulations as the President may prescribe and to the extent considered necessary and appropriate, as provided therein, appropriations

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or other funds available to an agency for administrative expenses are available for the reimbursement of all or part of the following expenses of an employee for whom the Government pays expenses of travel and transportation under section 5724(a) of this title:

* * * * *

"(4) Expenses of the sale of the residence (or the settlement of an unexpired lease) of the employee at the old station and purchase of a home at the new official station required to be paid by him when the old and new official stations are located within the United States, its territories or possessions, the Commonwealth of Puerto Rico, or the Canal Zone. * * *"

An employee for whom the Government pays travel and transportation expenses under 5 U.S.C. § 5724(a) (1970) is defined as:

"(1) * * * an employee transferred in the interest of the Government from one official station or agency to another for permanent duty * * *."

Since Mr. Daniels was not transferred from Anchorage to another location for permanent duty, he failed to satisfy one of the statutory criteria. Return to the continental United States for separation by retirement, or any other type of separation, cannot be substituted for this statutory requirement.

Furthermore, it is clear under 5 U.S.C. § 5724(d) (1970) that when an employee transferred to a position located in Alaska returns to a location in the 48 States, he is entitled to travel and transportation expenses "with the same limitations prescribed for a new appointee" under 5 U.S.C. § 5722 (1970). The latter provision of law allows reimbursement only for (1) the travel expenses of the new employee and (2) transportation expenses of his immediate family and his household goods and personal effects to and from the place of employment outside the continental United States. Expenses incident to real estate transactions cannot be considered as travel or transportation expenses under the above cited statute. Therefore, since employees returning from Alaska

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positions to which they had been previously transferred are considered the same as new appointees, such returning employees are not entitled to reimbursement by the Government for real estate expenses. This interpretation is confirmed by FTR para. 2-1.5g(2)(c) (May 1973) which provides among other things that reimbursement of real estate sale and purchase expenses is not allowable for new appointees.

Mr. Daniels contends that his return travel to the continental United States for purposes of separation by retirement should be considered the same as a permanent change of station. He points out that the phrase "permanent change of station" is not defined in the FTR and should therefore be construed by this Office to include a situation like his. Although he correctly observes that the subject phrase is not expressly defined in those terms, we note that the phrase "Official station or post of duty" is defined in FTR para. 2-1.41 (May 1973) to mean the "building or other place where the * * * employee regularly reports for duty." Relating this definition to the conditions of eligibility for real estate allowances set forth in chapter 2, part 6 of FTR (May 1973) supports no other conclusion but that real estate expenses are allowable only when the employee is permanently leaving one official duty station in the United States and assuming new duties at another such station. Moreover, FTR para. 2-6.4 (May 1973) specifically excludes new appointees from eligibility for reimbursement of expenses incurred in connection with residence transactions and as has been discussed above, employees returning to the continental United States for separation after having been transferred to posts such as Alaska, are considered in the same category as "new appointees."

In view of the foregoing we must conclude that the interpretation suggested by Mr. Daniels is not permitted by the applicable statutory and regulatory provisions. Therefore, the settlement action taken by our Transportation and Claims Division in denying his claim is hereby sustained.

R.F.KELLER

Deputy; Comptroller General
of the United States