

DOCUMENT RESUME

02921 - [A2153264]

[Reimbursement for Real Estate Expenses]. B-198496. July 29, 1977. 4 pp. + 2 enclosures (2 pp.).

Decision re: Ralph P. Mendenhall; by Robert F. Keller, Deputy Comptroller General.

Issue Area: Personnel Management and Compensation: Compensation (305).

Budget Function: General Government: Central Personnel Management (805).

Organization Concerned: Department of the Army.

Authority: 5 U.S.C. 5724a(4). 2 J.T.R., para. C8350. B-183196 (1976). B-179157 (1973). 46 Comp. Gen. 703. P.T.R. (PPHR 101-7), para. 2-6.1.

Army civilian employee transferred from Canal Zone to Texas claimed reimbursement of real estate expenses incurred from the sale of his residence in Virginia. He was not entitled to reimbursement as residence was not located at old official duty station, and he therefore could not fulfill occupancy requirements of regulations. (DJM)

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DECISION

Ramsey R. ...

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

FILE: B-188496**DATE:** July 29, 1977**MATTER OF:** Ralph F. Mendenhall - Reimbursement for real estate expenses

DIGEST: Civilian employee of Department of Army who was transferred from Fort Amador, Canal Zone, to Fort Bliss, Texas, not entitled to reimbursement for expenses incurred in connection with sale of Vienna, Virginia residence since residence was located at place where originally hired, not duty station in Canal Zone from which employee transferred.

This action is in response to an appeal by Mr. Ralph F. Mendenhall, an employee of the Department of the Army, from the settlement certificate dated January 28, 1977, issued by our Claims Division, which disallowed reimbursement of real estate expenses incurred by Mr. Mendenhall in connection with the sale of a residence in Vienna, Virginia, shortly after his change of official station from Fort Amador, Canal Zone, to Fort Bliss, Texas, in August 1973.

The record discloses that Mr. Mendenhall was originally hired for a position at Fort Clayton, Canal Zone, in August 1969, while residing in Vienna, Virginia. Pursuant to Travel Order No. CPO 73-419 dated August 14, 1973, the claimant was reassigned from Fort Amador, Canal Zone, to Fort Bliss, Texas. We have been informally advised by an official of the Department of the Army that Forts Clayton and Amador are less than 5 miles apart and that, in all probability, the claimant was transferred to another job in the same work unit from Fort Clayton to Fort Amador. The two installations are now a part of the Panama Canal Military Reservation. Mr. Mendenhall reported for duty to his new station on September 3, 1973. He states that he retained his residence in Vienna during his 4-year tour of duty in the Canal Zone and leased the property until March 31, 1974, at which time he put it up for sale. Due to a tight money market in the East at that time, he was unable to obtain a buyer until September 27, 1974. The claimant states that this was his first move from one civil service

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position to another and that he was not informed of the provisions of paragraph C8350, chapter 8, Joint Travel Regulations (JTR), Volume 2, which authorize reimbursement of certain expenses incurred in selling the residence in Virginia. He requests an extension of the time limitation contained in paragraph C8350 and reimbursement of real estate expenses incurred in selling the Virginia residence in the amount of \$3,598.67. His claim for reimbursement was submitted on August 27, 1976.

In his letter of appeal dated February 10, 1977, to the Honorable Richard C. White, House of Representatives, and forwarded by the Congressman to this Office by letter dated February 16, 1977, Mr. Mendenhall contends that he was required to live in Government quarters in the Canal Zone and it was impossible to purchase real estate in the Canal Zone. He therefore claims he is entitled to reimbursement for the expenses incurred in the sale of the residence owned by him in Virginia.

Reimbursement to Federal employees of certain expenses incurred in connection with residence transactions incident to a transfer of duty station is governed by section 5724a(4) of title 5, United States Code (1970), and the regulations issued pursuant thereto. At the time of Mr. Mendenhall's transfer from the Canal Zone to Fort Bliss in September 1973, the applicable regulations were contained in the Federal Travel Regulations (FTR) (FPMR 101-7) (May 1973), paragraph 2-6.1, and paragraph C8350 of the JTR, Volume 2. Paragraph 2-6.1 of the FTR provides, in pertinent part, as follows:

"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 in connection with the sale of one residence at his old official station, for purchase (including construction) of one dwelling at his new official station, or for the settlement of an unexpired lease involving his residence or a lot on which a mobile

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home used as his residence was located at the 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 was first definitely informed by competent authority of his transfer to the new official station.

"e. Time limitation. The settlement dates for the sale and purchase or lease termination transactions for which reimbursement is requested are not later than 1 (initial) year after the date on which the employee reported for duty at the new official station. Upon an employee's written request this time limit for completion of the sale and purchase or lease termination transaction may be extended by the head of the agency or his designee for an additional period of time, not to exceed 1 year, regardless of the reasons therefor so long as it is determined that the particular residence transaction is reasonably related to the transfer of official station."

At the time of his transfer to Fort Bliss, Mr. Mendenhall was administratively authorized an allowance for expenses incurred in connection with real estate transactions. He admits he was reimbursed \$185 representing expenses incident to a purchase of a residence at El Paso incident to his transfer to Fort Bliss. However, the FTR governing this transfer entitle Mr. Mendenhall to reimbursement only if the expenses were incurred in connection with the sale of a residence at his old official station. The language of the aforementioned regulation is clear and unambiguous. Reimbursement is

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authorized only in connection with the sale of the employee's dwelling at his old official station which dwelling was his actual residence at the time he was first definitely informed by competent authority of his transfer to the new official station. In the instant case the residence which Mr. Mendenhall sold on September 27, 1974, was not located at his old official station (Canal Zone)--the location of the residence in question being at Vienna, Virginia, the employee's place of residence at the time he was initially employed for duty in the Canal Zone--and was not his residence at the time he received notice of transfer to Fort Bliss, Texas. Inasmuch as the claimed expenses were incurred in connection with a real estate transaction in Virginia, there is no basis upon which to justify reimbursement as being incident to the employee's transfer to Fort Bliss, Texas. Matter of Chester A. Cisowski, B-183196, February 2, 1976; Matter of John Prelec, B-179157, August 20, 1973, and Matter of Frank P. Mulcahey, 46 Comp. Gen. 703 (1967).

The aforementioned regulations were promulgated under the authority of 5 U.S.C. § 5724a(a) and have the force and effect of law and, therefore, may not be waived in an individual case. B-183196, February 2, 1976. Since the sale of the residence in Vienna was not incident to Mr. Mendenhall's transfer to Fort Bliss from the Canal Zone, the time limitation in paragraph 2-6.1 of the FTR would not be applicable to this case.

Mr. Mendenhall also contends that he was required to live in Government quarters in the Canal Zone as it was impossible to purchase real estate in the Canal Zone, and therefore, he is entitled to reimbursement for expenses incurred in the sale of the residence in Virginia. However, as we have stated earlier, the Federal Travel Regulations hereinbefore quoted were issued pursuant to 5 U.S.C. § 5724a(a) and, accordingly, have the force and effect of law. This Office has no authority to waive, extend, or modify regulations issued thereunder. Cisowski, supra.

Accordingly, the settlement certificate of January 28, 1977, issued by our Claims Division, disallowing reimbursement of real estate expenses incurred by Mr. Mendenhall in selling a residence located in Vienna, Virginia, is sustained.

Deputy


Comptroller General
of the United States

*Barney Patton,
Comptroller*

Director, Claims Division

JUL 29 1977

Deputy Comptroller General R.F. KELLER

Reimbursement for real estate expenses - B-188496-O.M.

Returned herewith is Claims File No. 7-2727080, submitted to this Office by your memorandum of February 23, 1977, for our consideration of the appeal of Mr. Ralph F. Mandenhall, an employee of the Department of the Army, to your settlement action of January 28, 1977, which disallowed his claim for reimbursement of real estate expenses incurred by him in connection with the sale of a residence in Vienna, Virginia, at the time of his change of official station from Fort Amador, Canal Zone, to Fort Bliss, Texas, in August 1973.

By decision of this date, copy attached, we have sustained your prior action in the matter.

Attachments



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

*Ency. Portman
C. W. P. W.*

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July 29, 1977

The Honorable Richard C. White
House of Representatives

Dear Mr. White:

Further reference is made to the claim of Mr. Ralph F. Mendenhall, an employee of the Department of the Army, for reimbursement of real estate expenses incurred by him in connection with the sale of a residence in Vienna, Virginia, shortly after his change of official station from Fort Amador, Canal Zone, to Fort Bliss, Texas, in August 1973.

As you will note and in accordance with the request in your letter dated February 16, 1977, we have addressed the contention of Mr. Mendenhall that he was required to live in Government quarters in the Canal Zone since it is impossible to purchase real estate in the Canal Zone, and therefore, he is entitled to reimbursement for the expenses incurred in the sale of the residence owned by him in Virginia.

By decision of this date, B-188496, copy enclosed, we have sustained the disallowance of Mr. Mendenhall's claim by our Claims Division in its settlement action dated January 28, 1977. We regret we are unable to render a determination favorable to your constituent.

Sincerely yours,

Deputy

W. K. ...
Comptroller General
of the United States

Enclosures