

4387

04083

JANNICELLI
C.P.



DECISION

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

FILE: B-189122

DATE: November 7, 1977

MATTER OF: Jesse A. Greer - Real Estate Expenses

DIGEST: At the time he was notified of transfer, employee was prohibited by court order from residing in his house at old official station pending his divorce. He was ordered to make all mortgage payments during this period and was eventually awarded the house by the court. Since employee would have resided in house but for court order, he has substantially complied with the occupancy requirement of para. 2-6.1d of the FTR (FPMR 101-7, May 1973). Therefore, reimbursement of real estate expenses was proper and collection action need not be initiated. B-177343, March 7, 1973, distinguished.

This action is in response to a letter of May 13, 1977, from R. G. Bordley, Chief, Accounting and Finance Division, Defense Logistics Agency, requesting a decision concerning the entitlement of Mr. Jesse A. Greer to reimbursement of real estate expenses incurred in connection with the sale of his residence at his old official station incident to a permanent change of station.

The record shows that Mr. Greer was assigned to Defense Contract Administration Services Region, Atlanta, Georgia, with a duty station in New Orleans, Louisiana. In February 1976, he was notified that he was being transferred to Cameron Station, Alexandria, Virginia. At the time of the notification, Mr. Greer owned a home in New Orleans, but he was prohibited from living in that home by a court order pending his divorce. He was residing, therefore, in an apartment in New Orleans when notified of his transfer. Subsequent to the transfer, Mr. Greer was awarded the house by the court. He sold the residence and made a claim for \$2,950 for real estate expenses he had incurred. On his DD Form 1705, "Application for Reimbursement of Expenses Incurred by DOD Civilian Employee Upon Sale or Purchase (or both) of Residence Upon Change of Duty Station," Mr. Greer asterisked his certification of residence with the following note: "Inasmuch as I was separated from my wife pending divorce I was not residing in the family residence at time of transfer." This statement went

B-189122

unnoticed at the time the claim was reviewed and payment was made in the sum of \$2,677.

The questions presented are whether the payment of real estate expenses was proper in these circumstances and, if we find that reimbursement was improper, whether the agency must institute collection procedures.

An employee transferred in the interest of the Government may properly be reimbursed for expenses incurred in connection with the sale of the employee's residence at the old official station pursuant to section 5724a(a)(4) of title 5, United States Code (1970). The implementing regulations are found in part 6 of the Federal Travel Regulations (FTR) (FPMR 101-7, May 1973). Paragraph 2-6.1 of the FTR provides, in pertinent part, as follows:

"2-6.1. 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 * * * 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."

In our decision B-177343, March 7, 1973, we held that an employee who was prohibited by court order from residing in a home he owned at his old official duty station could not properly be reimbursed the real estate expenses incurred when he sold that home incident to a transfer of his official duty station since he did not fulfill the above occupancy requirement as set forth in paragraph 4.1d of OMB Circular No. A-56, the predecessor to the above-quoted FTR provision. However, the claimant in B-177343, supra, had already been reimbursed expenses incurred incident to the termination of a lease on his rented dwelling at the old duty station. We ruled that the law contemplated reimbursement

B-189122

of the expenses of only one residence transaction at the old official station. Since the claimant had already been reimbursed the expense of terminating his lease, we held that reimbursement of the costs of the sale of his house would not be proper.

In the present case, however, Mr. Greer had been ordered to continue to make all mortgage payments pending his divorce, and the court eventually awarded the house to Mr. Greer. Moreover, Mr. Greer states that he would have been residing in the house at the time he was first notified of his impending transfer but for the court order preventing him from doing so. He also indicates that he would have continued to reside in the house once the court allowed him to do so but for his transfer to Alexandria, Virginia. We also note that there is no evidence that Mr. Greer has already been reimbursed expenses associated with any other residence. These circumstances distinguish this case from B-177343, supra. Therefore, we believe that there has been substantial compliance with the occupancy requirement of paragraph 2-6.1d of the FTR. See B-164043, May 28, 1968; B-165830, January 31, 1969; and B-166270, March 21, 1969.

Accordingly, reimbursement of Mr. Greer's real estate expenses on the sale of his house was proper and no collection procedures need be initiated.


Deputy Comptroller General
of the United States