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**DECISION**



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

04645

FILE: B-189900

DATE: January 3, 1978

MATTER OF: William E. Weir - Cancelled Transfer  
Expenses - Meritorious Claims Act  
Consideration

DIGEST: Employee who had heart attack after receiving orders transferring him from Maryland to England and whose orders were, therefore, revoked may not be reimbursed real estate expenses for buying and selling residences in Maryland since cancelled transfer was to location outside United States and to other than area designated by 5 U. S. C. § 5724a(a)(4). He may, however, be reimbursed for transportation of household goods between former residence sold incident to transfer orders and other Maryland residence purchased upon revocation of orders. Real estate expense claim is not for reporting to Congress as meritorious claim.

This action is in response to a request for an advance decision dated August 15, 1977, submitted by Colonel William E. Dyson, Executive, Per Diem, Travel and Transportation Allowance Committee, as to the entitlement of Mr. William E. Weir, an employee of the National Security Agency (NSA), to reimbursement of relocation expenses.

The record shows that on January 14, 1977, Mr. Weir was authorized a permanent change of duty station from Fort George G. Meade, Maryland, to Cheltenham, England. He was to report for duty on June 30, 1977. In preparation for the overseas assignment, Mr. Weir entered into a contract of sale for his residence at his old duty station on February 16, 1977. On March 27, 1977, Mr. Weir entered the North Arundel Hospital Coronary Care Unit because of chest pains experienced earlier in the day. The diagnosis indicated that Mr. Weir had suffered an acute myocardial infarction (heart attack). As a result, Mr. Weir was hospitalized until April 15, 1977. His personal physician indicated that Mr. Weir would not be able to resume full-time duties for at least 4-6 months after release from the

B-189900

hospital, and a medical evaluation by an agency physician showed that Mr. Weir could not be approved for overseas duty until October 1, 1977, at the earliest. Mr. Weir was faced with the requirement to vacate his old residence on or about June 15, 1977, under the contract of sale, which the purchaser would not agree to cancel. Therefore, Mr. Weir entered into a contract to purchase a new home on April 23, 1977. On April 30, 1977, he notified the Director of Civilian Personnel, NSA, that he would have to withdraw from his overseas duty assignment. The requested withdrawal was granted and the overseas assignment orders were revoked on May 16, 1977.

Mr. Weir submitted a voucher on July 6, 1977, claiming reimbursement of real estate expenses incurred in connection with the sale of one residence and the purchase of another residence in the vicinity of his official duty station in Maryland, as well as for the cost of moving his household goods between the two residences. The Chief, Finance and Accounting, Central Security Service, NSA, requested that the Per Diem, Travel and Transportation Allowance Committee forward the claim to our Office for an advance decision as to Mr. Weir's entitlement. He also requested that we consider reporting the claim to Congress under the Meritorious Claims Act, 31 U.S.C. § 236 (1970), if it cannot otherwise be paid.

Our Office has held that, where a transfer has been cancelled and certain relocation expenses would have been reimbursable had the transfer been effected, an employee may be reimbursed for expenses incurred in anticipation of the transfer and prior to its cancellation. See Dwight L. Crumpacker, B-187405, March 22, 1977; and B-177439, February 1, 1973. If the employee's duty station has not changed as a result of the cancelled transfer, then we have treated the employee for reimbursement purposes as if the transfer had been completed and he had been retransferred to his former duty station.

While ordinarily revocation of transfer orders at the request of an employee will not be regarded as a cancelled transfer for the purpose of relocation expense reimbursement under the above-cited decisions, in view of the circumstances, the revocation of Mr. Weir's transfer orders may be considered as other than at his request. In view of the fact that Mr. Weir was not expected to be physically able to resume regular full-time duties until the

BM 89900

of 1977, it appears that NSA would have been obliged to revoke the transfer orders on its own initiative if Mr. Weir had not himself requested their revocation. Consistent with the Department of Defense policy as set forth at paragraph C4409-2 of the Joint Travel Regulations, Volume II, of regarding "illness not induced by misconduct" as an acceptable reason for releasing an employee from an agreed period of duty overseas as a condition to reimbursement of relocation expenses, the cancellation of Mr. Weir's transfer orders may be regarded as a matter other than of his own convenience.

Reimbursement of transfer-related real estate expenses is authorized by 5 U. S. C. § 5724a (1970) which provides, in pertinent part, that:

"(a) Under such regulations as the President may prescribe and to the extent considered necessary and appropriate, as provided therein, appropriations or other funds available to an agency for administrative expenses are available for the reimbursement of all or part of the following expenses \* \* \*

\* \* \* \* \*

"(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. \* \* \*"

The requirement regarding the location of the old and the new duty stations has been carried over into paragraph 2-6.1a of the Federal Travel Regulations (FTR) (FPMR 101-7) (May 1973). We have consistently held that the statute and regulations require that both the old and the new duty stations be located within the United States or other designated areas. 47 Comp. Gen. 93 (1967) and 54 Comp. Gen. 1006 (1975). Since Mr. Weir could not have been reimbursed real estate expenses in connection with either the proposed transfer to Cheltenham, England, or theoretical retransfer back to Maryland, his claim for real estate expenses in connection with the cancelled transfer must be disallowed.

B-189900

The transportation of household goods of transferred employees may be authorized under the authority of 5 U. S. C. § 5724(a)(2) (1970), and Part 2-8 of the FTR without regard to the location of either the old or new duty station. Therefore, incident to the cancelled transfer, Mr. Weir may be reimbursed expenses for transportation of household goods between his former and his current Maryland residence, insofar as otherwise proper.

Concerning the application of the Meritorious Claims Act, that act provides that when a claim is filed in this Office that may not be lawfully adjusted by use of an appropriation theretofore made, but which claim in our judgment contains such elements of legal liability or equity as to be deserving of the consideration of Congress, it shall be submitted to the Congress with our recommendations. The remedy is an extraordinary one and its use is limited to extraordinary circumstances.

The cases reported for the consideration of the Congress generally involve equitable circumstances of an unusual nature and which are unlikely to constitute a recurring problem, since to report to the Congress a particular case when similar equities exist or are likely to arise with respect to other claimants would constitute preferential treatment over others in similar circumstances.

The circumstances of Mr. Weir's case are neither unusual nor unlikely to recur. See for example, Lingo D. Harrison, AIC, USAF, B-187216, February 1, 1977. Therefore, we do not find the elements of unusual legal liability or equity which would justify our reporting his claim for real estate expense reimbursement to the Congress for its consideration under the Meritorious Claims Act.

Mr. William E. Weir's claim for transportation of household goods and personal effects may be allowed in accordance with the above discussion. That portion of his claim relating to real estate expenses is disallowed for the above-stated reasons.

  
Deputy Comptroller General  
of the United States