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DECISION

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

FILE: B-191111

DATE: March 31, 1978

MATTER OF: Duane S. Hardesty - Real Estate Sales Expenses

DIGEST: Employee of Defense Logistics Agency (DLA) who had left his residence in Casselberry, Florida, to accept a DLA appointment at Fort Devens, Massachusetts, was transferred from Fort Devens to New Orleans, Louisiana. He claims reimbursement for real estate expenses of selling his Casselberry residence incident to transfer. Employee is not entitled to reimbursement because residence which was sold was not at the old station and he did not regularly commute between Fort Devens and such residence.

This is in response to a request for advance decision, which has been approved by the Department of Defense (DOD) Per Diem, Travel and Transportation Allowance Committee and assigned PDTATAC Control No. 78-3, concerning whether DOD Defense Logistics Agency (DLA) employee Duane S. Hardesty may be reimbursed for the sale of a Casselberry, Florida, dwelling in connection with his transfer from Fort Devens, Massachusetts, to New Orleans, Louisiana.

The record indicates that Mr. Hardesty lived at his residence in Casselberry, Florida, until his appointment to a position with DLA at Fort Devens, Massachusetts, effective August 9, 1976. Believing that Fort Devens might be closed, he left his wife and daughter in Florida where they continued to reside at the Casselberry residence. Mr. Hardesty would occasionally visit his family at Casselberry. By Travel Authorization dated March 17, 1977, Mr. Hardesty was transferred to New Orleans, Louisiana. The travel authorization authorized reimbursement of real estate expenses. Intending to relocate his family to New Orleans, Mr. Hardesty put the Casselberry residence up for sale, and on May 31, 1977, completed settlement. On June 6, 1977, having already reported to his new duty station and relocated his family in

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New Orleans, Mr. Hardesty filed a voucher which included a claim for reimbursement for real estate expenses of the sale of the Casselberry residence. That very same day, DLA issued Amendment A to Travel Authorization dated March 15, 1977, limiting reimbursement of real estate expenses to the purchase of a residence at New Orleans.

Reimbursement of certain relocation expenses is authorized by 5 U.S.C. 5724a (1976), which provides in pertinent part as follows:

"(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 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 * * * 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 regulations implementing 5 U.S.C. 5724a are contained in the Federal Travel Regulations (FTR) (FPMR 101-7, May 1973). Volume 2 of the Joint Travel Regulations (2 JTR) contain similar provisions and are applicable to travel of civilian employees of DOD.

Regarding real estate sales expenses, the statute and regulations provide that an employee may only be reimbursed for the

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expenses of selling a residence at his old duty station. FTR para. 2-6.1; 2 JTR para. C14000-1 (Change 138, April 4, 1977). Moreover the regulations expressly provide that the residence must be a residence "from which the employee regularly commutes to and from work." FTR para. 2-6.1b; 2 JTR para. C14000-1.6.

Our Office consistently has held that when an employee returns to a residence only on weekends, such residence does not constitute a residence "from which the employee regularly commuted to and from work." Matter of Fred Kaczmarowski, B-189898, November 3, 1977, and cases cited therein. In the present case Mr. Hardesty did not even return to his Casselberry residence as frequently as on weekends.

Accordingly, his claim for reimbursement for expenses incurred in selling his Casselberry residence is disallowed since that residence does not satisfy the requirements of the regulations authorizing reimbursement.

Mr. Hardesty, in a statement attached to the request for advance decision, contends that the regulations' proximity to the old duty station and commuting requirements are not authorized by the statute. However, 5 U.S.C. 5724a expressly limits reimbursement for real estate sales expenses to "expenses of the sale of the residence * * * of the employee at the old station." (Emphasis added.). Moreover, the statute authorizes the issuance of regulations prescribing entitlement to reimbursement "to the extent considered necessary and appropriate." Therefore, the commuting requirement of the regulations is authorized by 5 U.S.C. 5724a.

Maintaining that he had no knowledge of the conditions under which real estate expenses may be reimbursed, and that he relied, to his detriment, upon the authorization of real estate expenses contained in Travel Order dated March 17, 1977, Mr. Hardesty claims he should be entitled to an equitable adjustment similar to that used in termination for the convenience of the Government in procurement actions. Government employees are charged with constructive knowledge of statutory requirements pertaining to them and of the implementing regulations authorized by statute to be issued, even if the employees have no actual knowledge of such

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things. Matter of Michael Dana, 56 Comp. Gen. 470 (1977). This imputed knowledge aside, it is a well settled rule of law that the Government cannot be bound beyond the actual authority conferred upon its agents by statute or by regulations. See, Utah Power and Light Company v. United States, 242 U.S. 389 (1917); German Bank v. United States, 148 U.S. 573 (1893); Matter of M. Reza Fassihi, 54 Comp. Gen. 747 (1975). While it is unfortunate that the travel order authorized an allowance for Mr. Hardesty which was not properly allowable to him under applicable statutory authority, payment of such allowance may not be allowed. See Fassihi, supra. The above rule cannot be circumvented by invoking principles of contract law. Since Federal employees are appointed and serve only in accordance with the applicable statutes and regulations, the ordinary principles of contract law do not apply. Matter of Eider and Owen, 56 Comp. Gen. 85 (1976), and cases cited therein. Cf. Bell v. United States, 366 U.S. 393 (1961).

Finally, Mr. Hardesty asserts that our decisions at 53 Comp. Gen. 123 (1973), 48 Comp. Gen. 651 (1969) and 27 Comp. Gen. 267 (1948) are inconsistent with our decision here. All of the cited decisions basically held that when an employee is transferred from one duty station to another and then, before incurring relocation expenses in connection with the first transfer, the employee is transferred to a third station, the employee is entitled to reimbursement of certain relocation expenses of moving from the first duty station directly to the third duty station so long as the move is accomplished within the applicable limitation for reimbursement of relocation expenses in connection with the first transfer. The present case is inapposite principally because Mr. Hardesty is not claiming the expenses of selling a residence at a duty station from which he was transferred. He left his Casselberry residence to take either an initial Government appointment or an appointment after a break in service. While statutory authority exists for reimbursement of the relocation expenses incurred by a transferred employee at his old duty station, none exists authorizing reimbursement of expenses incurred by the employee at the place he resided when accepting a new appointment within the continental United States under the circumstances presented.

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Accordingly, since there is no statutory authority for payment, Mr. Hardesty's claim for reimbursement of the expenses he incurred selling his Casselberry residence is disallowed.

Deputy

R. W. Keller
Comptroller General
of the United States