

**DECISION**

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

**FILE:** B-213610

**DATE:** April 18, 1984

**MATTER OF:** James K. Marron - Claim for Relocation Expenses Incurred Prior to Notification of Transfer

**DIGEST:**

Employee entered into contract to sell his residence and vacated residence prior to his selection for position under competitive procedures and Agency's formal notice of transfer. The real estate expenses claimed may not be reimbursed since the sale was not incident to his transfer, and the house for which he claims reimbursement was not his residence at the time he was officially notified of his change of station.

This decision is in response to a request by John R. Nienaber, an Authorized Certifying Officer of the United States Department of Agriculture, for an advance decision as to whether Mr. James K. Marron, an Agriculture Department employee, is entitled to residence transaction expenses incurred because of a permanent change of station. For the reasons that follow, we hold that he is not so entitled.

FACTS

Mr. Marron is an employee of the Soil Conservation Service (SCS), United States Department of Agriculture, and was assigned to their Snow Survey Program in Reno, Nevada. In November 1982, he became aware of a plan to reorganize the Snow Survey Program in such a way that his job, he was convinced, "would not have been the same," although the SCS insists his position was never in jeopardy. After discussing the reorganization plan with his wife, he decided he "would be happiest" in another position. Mr. Marron then applied for several new positions, none of which were in Reno, and spoke with

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a number of people about his desire for a new position. One of the people he spoke to was the Snow Survey Program Manager in Portland, Oregon, who assured Mr. Marron that he would do everything he could to accommodate him. Mr. Marron insists that it was during an April 20, 1983, meeting with the Program Manager that he became aware of an intent on the part of the SCS to transfer him. However, the Program Managers says that he specifically advised Mr. Marron that he had no authority to offer him the position in question, and was not in fact doing so; he was merely passing along the word that the office was trying to accommodate his request.

In the meantime, Mr. Marron had placed his home in Reno on the market and, on March 1, 1983, signed a sales agreement with a prospective buyer. The closing date, originally April 1, 1983, was postponed until May 1, then to May 20. In addition, Mr. Marron and his wife vacated the house on May 1, allowing the prospective buyers to move in so they would not "back out of the deal." Consequently, Mr. Marron was not residing in the home on May 17, the date he was finally informed of his reassignment to the Water Supply Forecasting Staff in Portland, Oregon.

The Agency denied Mr. Marron's claim for reimbursement on the basis that the sale was not related to his transfer, and the house for which he claims reimbursement was not his residence at the time he was officially notified of his change of station.

The Agency asks several questions concerning the effect of the date the sales agreement was signed (before he was officially notified of the transfer), the effect of the settlement date (after official notification); and the effect of Mr. Marron's vacating his residence on May 1, prior to the date he was officially notified of his transfer. A discussion of the issues follows.

#### OPINION

We have previously held that a contract to sell a residence before definite notice of a transfer does not in itself disqualify an employee from reimbursement for relocation expenses incurred in the sale or purchase of a residence. 48 Comp. Gen. 395 (1968). However, this decision announced a limitation concerning the time the employee incurs real estate expenses in anticipation

of his transfer. It held that reimbursement is authorized only if there is an administrative intention to transfer the employee clearly evident at the time the real estate expenses were incurred. See also 52 Comp. Gen. 8 (1972). In recent cases, reimbursement has been denied when there was no clear evidence of an administrative intention to transfer the employee at the time the real estate expenses were incurred and the employing agency does not find that the sale or purchase of the residence was incident to the transfer. Further, agencies have broad discretion in deciding whether the sale or purchase was incident to the transfer. Samuel V. Britt, B-186763, October 6, 1976; Joan E. Marci, B-188301, August 16, 1977.

In this case the Agency has exercised its discretion and made a determination that the sale was not incident to Mr. Marron's transfer. We agree. Mr. Marron placed his home on the market and applied for various positions within the agency. The original settlement date for the sale of his house was extended from April 1 to May 1, when Mr. Marron did not receive a firm offer of employment. Mr. Marron then moved out of the house on May 1, and settled on May 20, 1983, 3 days after he received notification of his selection for a position in Portland. Thus, we do not believe that the sale of Mr. Marron's house was incident to his transfer. Rather, the sale was orchestrated by Mr. Marron based on a presumption that eventually he would receive a firm offer of employment, and a subsequent transfer.

Further paragraph 2-6.1d of the Federal Travel Regulations, FPMR 101-7 (September 1981), sets forth the requirement that "[t]he dwelling for which reimbursement of selling expenses is claimed was the employee's residence at the time he/she was first definitely informed by competent authority of his/her transfer to the new official station." We have held that the regulation is satisfied if the employee, in selling his house, acted on the basis of a clearly evident administrative intent to transfer him. 53 Comp. Gen. 836 (1974). What constitutes a clear intention to transfer an employee depends on the circumstances in each case. Richard E. Fitzgerald, B-186764, March 3, 1977.

For similar reasons previously discussed, there is no basis for concluding that there was an administrative intent to transfer Mr. Marron before he moved out of his home on May 1, 1983. He placed his home on the market

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sometime prior to March 1, 1983--probably at least 1 or 2 months prior to that date since the record indicates that his original listing had run out before the sales agreement was signed. The earliest date that Mr. Marron mentions any awareness of an administrative intent to transfer him was April 18, 1983, during his meeting with the Program Manager. As indicated, the Program Manager insists that he made it clear to Mr. Marron that he was not authorized to offer him a position. A firm offer was not received until May 17, 1983, after Mr. Marron had vacated his home. Thus, the home from which he claims reimbursement was not the residence from which he commuted daily at the time he was first definitely informed by competent authority of his transfer.

Accordingly, Mr. Marron's claim for reimbursement of real estate expenses pertaining to the sale of his residence is denied.

*Milton J. Fowler*  
for Comptroller General  
of the United States