



The Comptroller General
of the United States

Washington, D.C. 20548

DCAA PLM-I

Decision

Matter of: Frank Penkevich - Real Estate Expenses -
Time Limitation
File: B-226352
Date: June 29, 1987

DIGEST

An employee had 3 years from the date he reported for duty at his new station (August 21, 1983) to purchase a residence at his new duty station. On April 25, 1986, shortly before the third anniversary of that date, he applied for a Veterans Administration mortgage. However, the mortgage was not approved until September 25, 1986, and settlement took place on October 17, 1986, approximately 2 months after the expiration of the 3-year period. The employee is not entitled to reimbursement of his purchase expenses since his residence was not purchased within the 3-year period after his transfer permitted by Federal Travel Regulations paragraph 2-6.1e. The regulation has the force and effect of law and may not be waived or modified.

DECISION

This decision is in response to a request from the Chief, Branch of Finance, Mine Safety and Health Administration, Department of Labor. It concerns the entitlement of an employee to be reimbursed real estate transaction expenses which were incurred more than 3 years after a permanent change-of-station transfer. The expenses may not be reimbursed for the following reasons.

BACKGROUND

Mr. Frank Penkevich, an employee of the Mine Safety and Health Administration, was authorized a change of permanent duty station from Pikesville, Kentucky, to Lansing, Michigan. He reported for duty at his new duty station on August 21, 1983. Reimbursement of real estate expenses was authorized.

In August 1985, the agency granted Mr. Penkevich a 1-year extension of the time for completion of the purchase of his residence. Mr. Penkevich reported that he had sold his residence in Stambaugh, Michigan, shortly before August 1985,

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which enabled him to finance a residence at his new duty station. Mr. Penkevich found a satisfactory residence and made application for Veterans Administration (VA) financing on April 25, 1986. However, due to various factors in the financial markets and an unusual back-up at the VA in processing and review, the lending institution did not receive written confirmation from the VA of approval until September 25, 1986. This occurred after the lending institution had forwarded the application to the VA on August 19, 1986, 3 days before the expiration of Mr. Penkevich's 3-year period granted to complete all real estate transactions. The record is unclear as to why the application was not submitted to the VA before August 19, 1986, even though the lending institution had accepted Mr. Penkevich's loan application on April 25, 1986. In any event, after the September 25, 1986, approval was received, settlement was scheduled and took place on October 17, 1986, approximately 2 months after the expiration of the 3-year period granted for the completion of such transactions.

DISCUSSION

The entitlement of Federal employees to be reimbursed for certain expenses incurred in connection with residence transactions incident to a permanent change of station is governed by 5 U.S.C. § 5724a and regulations issued pursuant thereto. The regulations applicable here are those contained in Part 6 of Chapter 2, Federal Travel Regulations, FPMR 101-7, incorp. by ref., 41 C.F.R. § 101-7.003 (1985) (FTR), as amended, in part, by GSA Bulletin FPMR A-40 (Supp. 4, August 23, 1982).

Paragraph 2-6.1e of the regulations, as amended, provides in part:

"e. Time limitation

"(1) Initial period. The settlement dates for the sale and purchase or lease termination transaction for which reimbursement is requested are not later than 2 years after the date that the employee reported for duty at the new official station.

"(2) Extension of time limitation

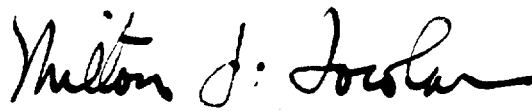
"(a) Upon an employee's written request, the 2-year time limitation for completion of the * * *

purchase * * * may be extended by the head of the agency or his/her designee for an additional period of time not to exceed 1 year."

We have held that the term "settlement" as used in FTR para. 2-6.1e refers to the closing of the real estate transaction by the payment of the contract price and the conveyance of the property to the purchaser. Glenn A. Kovar, B-186003, October 4, 1976; B-165115, September 11, 1968. Further, the time limit may not be waived or extended beyond the 1-year extension period regardless of the circumstances. See David N. Carrell, B-215733, September 25, 1984. See also Bobbie W. Curtis, 64 Comp. Gen. 215 (1985).

We are fully cognizant of the fact that due to conditions beyond the control of Mr. Penkevich, the settlement on his new residence was delayed for nearly 6 months. However, we know of no basis for tolling the running of the time limitations set forth in the regulations. Further, this Office has consistently held that the previously cited regulations have the force and effect of law and may not be waived or modified. James H. Gordon, 62 Comp. Gen. 264 (1983); and William R. Walberg, 58 Comp. Gen. 539 (1979); and Jerald W. Duxbury, B-219222, December 20, 1985.

Accordingly, since the time limit as extended expired on August 22, 1986, and settlement did not occur until October 17, 1986, Mr. Penkevich may not be reimbursed expenses of purchasing his residence incident to his transfer on August 21, 1983.

for 
Comptroller General
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