Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: - Real Estate Expenses

File: B-241196.7

Date: August 13, 1993

DIGEST

An employee requests reconsideration of prior decisions denying her claims for real estate expenses associated with the sale of a residence at her old duty station. The record includes contradictory statements regarding which of two residences had been her actual residence at the time she first learned of her transfer and whether her husband, with whom she held joint title, was a member of her household when the residence for which she claims reimbursement was sold. The contradictory statements render the claim too doubtful for the General Accounting Office to authorize payment.

DECISION

Ms. requests further reconsideration of our decisions[1] denying her claims for real estate expenses incident to her permanent change of station from Scott Air Force Base, Illinois, to Wright-Patterson Air Force Base, Ohio.[2] For the reasons stated below, we affirm our earlier decisions.

BACKGROUND

This case initially came to our Office as a request for an advance decision from Ms. 's employing agency, the Department of the Air Force, through the Per Diem, Travel and Transportation Allowance Committee. According to the agency, incident to her notice of transfer, Ms. on

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[1] _____, B-241196, Apr. 23, 1991, and _____ _____, B-241196.2, Dec. 5, 1991.

[2]Previously, she also had requested reconsideration of the denial of her claim for additional temporary quarters subsistence expenses. In this latest request for reconsideration, however, Ms. did not present any new objections to our denial of that claim for expenses. Therefore, this decision concerns only her claim for real estate expenses.

March 8, 1990, applied for agency relocation services to assist her in the sale of the residence she and her husband owned at Wesmeade Drive in , . The agency authorized relocation services based on that application. However, Ms. rejected the offer for that house made by the agency's relocation contractor and in a memorandum dated July 2, 1990, to her agency requested authorization to be reimbursed for the expenses of selling a home she and her husband owned located at Country Place Drive, . She stated in the memorandum that the Country Place Drive residence was her actual residence, explaining that "We maintain two residences as a matter of personal convenience and lived in both houses which are located in the same subdivision and alternated commuting from the two."

The agency presented the matter to us for a determination whether Ms. could be reimbursed for expenses incurred in the sale of the Country Place residence. In our decision _____, B-241196, Apr. 23, 1991, we noted that to qualify for real estate expense reimbursement, the dwelling must be the employee's actual residence at the time she was first informed of the transfer and it must be the residence from which she regularly commuted to work. We concluded, based on the facts presented, that Ms. 's actual residence at the time she first was notified of her transfer was the Wesmeade residence, and therefore she was not entitled to be reimbursed for sale of the Country Place house. Pertinent facts we noted that led to this conclusion, in addition to her listing the Wesmeade home as her official residence on her initial request for relocation benefits, were that the first contract she signed for the purchase of a home at her new duty station was conditioned on the sale of the Wesmeade residence and that her husband continued to occupy the Wesmeade home after Ms. 's relocation to Ohio.

In a letter received in our Office on June 17, 1991, Ms. requested reconsideration of that decision, stating that this was her first relocation with the Air Force and she was not familiar with the regulations governing transfers. She also stated that due to her living arrangements, she believed the sale of either home was reimbursable, and it was partially at the direction of Air Force officials that she listed the Wesmeade home on her application for relocation benefits. In support of her position, she submitted statements from several relatives and friends indicating that during the school year Ms. lived in the Country Place home with her son weekdays and in the Wesmeade home weekends and apparently at other times as well.

On July 9, 1991, Ms. wrote to our Office to provide additional information to support her Country Place claim, indicating that she had been separated from her husband since December 1988, and in fact had moved out of the Wesmeade house long before her notice of transfer in 1990. She stated, "I have maintained my own household since December, 1988 (the date I purchased the home on Country Place Drive)." She explained that she had been reluctant to bring this information forward for personal reasons. "However," she added, "after a year and an unfavorable decision from your agency, I am compelled to inform you of the exact nature of my living arrangements. . . ."

Ms. submitted a number of financial and utility records to prove that she had maintained her own residence since December, 1988. Also, apparently at her request, her husband sent this Office a letter dated August 22, 1991, corroborating Ms. 's July 9, 1991, letter and stating that Ms. had not lived in the Wesmeade residence since December 30, 1988, and that they "have been and continue to be maintaining separate residences," with each paying his or her own bills.

In reconsidering our April 23, 1991, decision, we reviewed the various documents and statements that had been submitted and noted various material inconsistencies which we could not resolve. Therefore, we sustained the denial of her claim on the basis of the long-standing rule that payment on claims should be withheld whenever there is substantial doubt as to the validity of the claim. _____, B-241196.2, Dec. 5, 1991. In doing so, we also noted that if the Country Place house, in fact, was her actual residence, Ms. 's failure in her first submission to this Office to mention her separation from her husband would be material to her claim because she only would be entitled to half the reimbursement for which she otherwise would be eligible. This is because when an employee holds title to a residence with someone who is not a member of his or her household at the time the residence is sold, the employee may be reimbursed only a pro rata amount based on his or her interest in the property. A spouse from which the employee is separated is not considered a member of her household. See also 41 C.F.R. § 302-6.1(c) and Alan Wood, 64 Comp. Gen. 299 (1985).

In her June 17, 1992, request for reconsideration, which is the basis for this decision, Ms. indicates that she and her husband reconciled in December 1989, and lived together in the Country Place Drive residence from then until July 30, 1990, a time frame that includes her notice of transfer (January 19, 1990) and her reporting date for her new position in Ohio (April 2, 1990). She asserts that the Wesmeade residence was unoccupied. Ms. has

submitted a number of letters from friends, neighbors, and others in support of her statements. She has also included a number of bank and telephone records to show that her husband changed his address to the house on Country Place Drive during this time period.

The agency reviewed Ms. 's latest submission and supporting documents and advised us in a February 10, 1993, letter that they are in full agreement with our decision of December 5, 1991, which concluded that the inconsistent statements render Ms. 's claim too doubtful to pay.

OPINION

As discussed in our previous decisions on Ms. 's claims there are several requirements that must be met for reimbursement for real estate expenses associated with the sale of a residence incident to a permanent change of station. The dwelling must be the employee's actual residence at the time the employee was first definitely informed of the transfer, and it must be the one from which the employee regularly commutes to work. 41 C.F.R. §§ 302-6.1(d) and 302-1.4(k) (1993).

If the employee shares title to a residence with someone who is not a member of the employee's household, the employee may be reimbursed only to the extent of the employee's ownership interest in the property. See 41 C.F.R. § 302-6.1(c). When a married couple with joint title to a residence separates and the employee's spouse does not physically reside with the employee, the spouse is not considered a member of the employee's household and the employee may be reimbursed only half of the expenses incurred for the sale of the residence. William A. Cromer, B-205869, June 8, 1982; Robert L. Rogers, B-209002, Mar. 1, 1983; Alan Wood, 64 Comp. Gen. 299 (1985).

To determine whether we can authorize payment on Ms. 's claim, we consider the facts of record in relation to these rules.

As we noted above, the form dated March 8, 1990, on which Ms. originally requested relocation benefits clearly stated the requirements set out above that a dwelling must meet to be considered the employee's residence. On that form Ms. certified that the Wesmeade house was her residence and met those requirements. After rejecting the offer on the Wesmeade house, she then told her agency in a memorandum dated July 2, 1990, that she and her husband both lived in two homes and that she regularly commuted from either home. After we denied reimbursement for the Country Place house, in her request for reconsideration which we received June 17, 1991, Ms. stated that she was

misled by agency officials about her entitlements, and believed she was entitled to reimbursement for the sale of either house. She then stated in her letter dated July 9, 1991, that she and her husband had been separated since December 1988, and in his letter dated August 22, 1991, Mr. stated that they had maintained separate residences since their December 1988 separation, with him living in the Wesmeade residence and her in the Country Place residence.

After our December 5, 1991, decision indicating that if the Country Place house was in fact her residence, she would be entitled to reimbursement for only half the sales expenses due to her separation from her husband, she then sought reconsideration, stating in her June 17, 1992, letter that "we were living together (at the Country Place Drive house) as a family during the period December 1989 through August 1990 (and beyond)," and that the Wesmeade house was unoccupied. These statements are inconsistent with her initial statement that she regularly commuted from both houses and flatly contradicts her subsequent statement, and that of her husband, that she had separated from her husband and had been maintaining her own household.

Ms. has provided evidence that she and her husband lived together in the Country Place Drive residence during the relevant time period; she has also provided evidence that she and her husband both lived at the Wesmeade residence at the time of her notice of transfer and that she and her husband were living apart at that same time.

Because of the plainly inconsistent statements detailed above and in our earlier decisions, we cannot determine whether the Wesmeade house or the Country Place house was her actual residence, and if it was the Country Place house whether she would be entitled to full or only partial reimbursement. In such situations, as we stated in our second decision on Ms. 's claims, we have long followed the rule that when a case record demonstrates that a claimant has made inconsistent statements of fact in support of a claim, then the claim is too doubtful to be approved for payment. See also Dennis Janicki, Oct. 31, 1986. Moreover, subsequent efforts to clarify such a record do not absolve the claimant of the consequences of the initial inconsistent statements. Such cases are better left to resolution in the courts, which offer the benefits of sworn testimony and cross-examination, the assurance of properly authenticated documents, and the opportunity to personally assess the credibility of witnesses. Without these advantages, submission to us of further comment and additional evidence would serve no useful purpose.

Accordingly, we affirm the denial of Ms. 's claim and leave her to pursue her remedy in the courts if she chooses.

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