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Decision

Matter of: John K. Bowman

File: B-247125

Date: June 12, 1992

DIGEST

Transferred employee was divorced from his wife approximately 2-1/2 years prior to his transfer. The judgment of divorce ordered the sale of the marital residence, the wife to remain in possession pending the sale, and the employee to make the mortgage payments and pay property taxes. The employee moved into an apartment and lived there for more than 3 years when notified of his transfer. He is not entitled to reimbursement of real estate expenses incurred in the sale of the property since he was not residing there at the time he was first notified of his transfer in accordance with the FTR, 41 C.F.R. § 302-6.1(d) (1991). Although the residence was not sold until approximately 1 month after his transfer, the sale of the property under the final divorce decree was incident to the employee's divorce, not his transfer.

DECISION

This decision is in response to a request concerning the entitlement of Mr. John K. Bowman, an employee of the Forest Service, United States Department of Agriculture, to reimbursement of real estate expenses incurred incident to his change of official station from Park Falls, Wisconsin, to Petersburg, Alaska, in May 1989.¹ For the reasons stated in this decision, Mr. Bowman is not entitled to reimbursement of the claimed real estate sale expenses and may not be refunded the \$2,626.88 previously paid to him and collected back by the Forest Service.

¹The request was submitted by Mr. Darold D. Foxworthy, Authorized Certifying Officer, Forest Service, reference 6540, pursuant to the terms of a no-fault pre-discrimination complaint settlement agreement wherein the employee and the agency agreed to the submission of the claim to the Comptroller General for a decision.

Mr. Bowman and his former wife owned and resided at a house located in Butternut, Wisconsin. On September 4, 1986, a judgment of divorce was issued by the Circuit Court of Price County, Wisconsin. The judgment provided, in pertinent part, that the residence was to be sold, that the former wife would remain in possession pending sale, and that Mr. Bowman would pay the monthly mortgage payments and the real property taxes on the residence. In January 1986, during the divorce proceedings, Mr. Bowman moved into an apartment near the marital residence and in May 1986, he moved into another apartment in Park Falls, Wisconsin, near his office. He was living in the second apartment on March 10, 1989, when notified of his transfer to Alaska. In a written statement, the owner of the apartment said that Mr. Bowman rented the apartment between approximately the fall of 1986 and April 1989, that he paid \$200 a month rent for the apartment including all utilities except telephone service, and that the apartment was his primary residence during this period. Mr. Bowman stated that he did not physically reside at the former marital residence but resided at the apartment when the job offer was made to him.

Mr. Bowman states that during the approximate 3-year period he lived in an apartment, he returned regularly to the former marital residence to mow the lawn, trim the trees, feed the cat, swim the lake, and to eat numerous meals. He says that had his former wife left the residence permanently, he would have moved back into the residence. Mr. Bowman contends that he is entitled to reimbursement of the expenses (50 percent) he incurred in the sale of the former marital residence.

The residence was placed on the market on April 28, 1989. Mr. Bowman reported for duty in Alaska on May 21, 1989. The residence was sold on June 26, 1989. Upon the basis of his September 6, 1989 travel voucher, the Forest Service paid \$2,626.88 (50 percent of the sale expenses) to Mr. Bowman for the expenses he incurred in the sale of the residence. However, based on evidence submitted later, the Forest Service determined that Mr. Bowman had not occupied the residence for more than 3 years prior to notification of his transfer to Alaska, and, therefore collected back the payment for real estate expenses it had made to Mr. Bowman.

The Federal Travel Regulation (FTR), 41 C.F.R. § 302-6.1(d) (1992) requires, as to occupancy, that the dwelling for which reimbursement of selling expenses is claimed was the employee's residence at the time he was first officially notified of his transfer to the new official station. John P. Sobal, B-233829, Sept. 15, 1989. However, we have allowed reimbursement on a case-by-case basis where there has been substantial compliance with the occupancy requirement of section 302-6.1(d) ~~61~~ where circumstances