

**DECISION****THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548*60020*  
*97855*

FILE: B-182572

DATE: October 9, 1975

MATTER OF:

Mrs. Beryl C. Tividad - Real Estate Expenses  
Retransfer to Former Duty Station

DIGEST:

Employee was transferred to new duty station. After 8 months she requested and was granted a 1-year extension of time to complete the sale of home at former duty station. One month later employee was retransferred to former duty station. Before extension expired, she completed sale of home. Agency denied reimbursement on grounds that transaction was not related to the transfer. Employee is entitled to reimbursement. No administrative determination that sale relates to transfer is required, except when extension is requested, and once extension is granted it may not be revoked unless it was not properly granted.

This matter is before us based upon a request for reconsideration of Settlement Certificate Z-2563835, issued by our Transportation and Claims Division on February 10, 1975, which denied reimbursement of house sale expenses claimed by Mrs. Beryl C. Tividad.

By Veterans Administration (VA) Travel Authority No. 674-40, dated October 12, 1972, Mrs. Tividad was transferred from the VA Hospital, New Orleans, Louisiana, to the VA Hospital, Temple, Texas, where she reported on November 1, 1972. By memorandum dated July 19, 1973, Mrs. Tividad requested that the 1-year settlement date limitation for the sale of her former residence in New Orleans be extended for an additional year. Mrs. Tividad's request for an extension was approved by a memorandum dated July 20, 1973. At the time the extension was granted the applicable regulation, para. 2-6.1e of the Federal Travel Regulations (FPMR 101-7) May 1973 (FTR), provided that an extension could be granted for any reason, " \* \* \* so long as it is determined that the particular residence transaction is reasonably related to the transfer of official station."

Less than 1 month after the extension had been granted, Mrs. Tividad was transferred--by VA Travel Authority No. 629-16, dated August 14, 1973--from Temple, Texas, back to New Orleans, Louisiana, reporting there on August 19, 1973. After her transfer to Texas, Mrs. Tividad attempted to sell her former residence in

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New Orleans and she also leased that residence to provide monthly income pending negotiations for sale. Upon her retransfer back to New Orleans in August 1973, Mrs. Tividad's former residence in New Orleans, was occupied by a lessee under a lease that was to run until October 31, 1973. Mrs. Tividad then leased a new residence for herself and continued her efforts to sell her former home. After several prospective sales fell through, Mrs. Tividad signed a contract of sale on December 28, 1973, with the settlement taking place on March 28, 1974. On December 28, 1973, Mrs. Tividad also signed a contract to purchase a home located at 310 South Scott Street, New Orleans, with the settlement taking place on April 4, 1974.

On April 5, 1974, Mrs. Tividad submitted a claim in the amount of \$343.50 for reimbursement of expenses arising from her purchase of a new residence. This claim was paid by the VA, and was not challenged in our Settlement Certificate issued February 10, 1975. On March 29, 1974, Mrs. Tividad had also submitted a claim for reimbursement of expenses arising from the sale of her former residence in the amount of \$1,658, under the travel authority transferring her from New Orleans to Temple. This claim was denied by the VA at the local level, on April 23, 1974, on the ground that, because of her retransfer to New Orleans in August 1973, the sale of her residence in New Orleans in March 1974 did not reasonably relate to the transfer of her official station to Temple, Texas. By letter of July 26, 1974, the VA Central Office affirmed the denial, citing FTR para. 2-6.1e (May 1973), and saying that:

"We agree with your opinion that the sale of the employee's residence does not reasonably relate to the transfer of official station to VAC, Temple, Texas. Therefore, an extension of the one-year limitation is not warranted and the claim may not be paid."

The Central Office's reasoning is not entirely clear since Mrs. Tividad had not repeated her request for an extension of the time for settlement, that extension having been previously granted. In effect, the VA apparently attempted to reverse its prior action and withdraw the extension it had already granted to Mrs. Tividad.

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In our Settlement Certificate of February 10, 1975, we ruled that, although the extension remained in effect, the sales contract was not entered into until 4 months after her return to New Orleans, and that under such circumstances we could not disagree with the agency determination that the sale was not related to the transfer to Texas.

The statutory authority for the reimbursement of real estate expenses is found in 5 U.S.C. § 5724a (1970), which provides, in pertinent part, that:

"(4) Expenses of the sale of the residence (or the settlement of an unexpired lease) 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. However, reimbursement for brokerage fees on the sale of the residence and other expenses under this paragraph may not exceed those customarily charged in the locality where the residence is located, and reimbursement may not be made for losses on the sale of the residence. This paragraph applies regardless of whether title to the residence or the unexpired lease is in the name of the employee alone, in the joint names of the employee and a member of his immediate family, or in the name of a member of his immediate family alone."

Section 5724(a) of title 5, U.S. Code, requires a finding that a transfer is in the interest of the Government. Once that finding is made, the statute authorizes certain benefits, restricted only by the terms of the implementing regulations.

At all times relevant to this decision, the governing regulations have been the Federal Travel Regulations, FTR (May 1973). Just as the statute does, FTR para. 2-1.3 requires that the transfer be in the interest of the Government and not primarily for the convenience of the employee. There are other instances where specific agency determinations must be made. Paragraph 2-1.5b of the FTR requires that certain determinations be made when the transfer is a "short distance" move. Paragraph 2-4.1 of the FTR requires that an

agency specifically authorize "house hunting" trips. We know of no similar provision, however, that requires a specific agency determination to be made generally authorizing the reimbursement of real estate expenses. The right to be reimbursed for real estate expenses vests as soon as it has been determined that a transfer is in the interest of the Government and the transfer has been consummated.

In denying Mrs. Tividad's claim, the agency made a separate determination that the sale did not reasonably relate to Mrs. Tividad's transfer from New Orleans to Temple. In making that determination, it cited FTR para. 2-6.1e (May 1973), which provides that:

"Time limitation. The settlement dates for the sale and purchase or lease termination transactions for which reimbursement is requested are not later than 1 (initial) year after the date on which the employee reported for duty at the new official station. Upon an employee's written request this time limit for completion of the sale and purchase or lease termination transaction may be extended by the head of the agency or his designee for an additional period of time, not to exceed 1 year, regardless of the reasons therefor so long as it is determined that the particular residence transaction is reasonably related to the transfer of official station."

Although this paragraph requires a determination that the particular transaction reasonably relates to a transfer, such a determination is to be made only in deciding whether or not an extension of the 1-year settlement date limitation may be granted. This paragraph neither authorizes nor permits an administrative determination in all cases that a real estate transaction relates to a transfer.

In the case at hand, Mrs. Tividad was granted a 1-year extension of time on July 20, 1973. Mrs. Tividad's right to that extension vested when it was granted. There is no authority for an agency to reverse or withdraw an extension of the settlement date limitation unless it was improperly granted. We see nothing in the record before us to indicate that the extension here was improper when it was originally granted. The orders transferring her back to New Orleans were not issued until a month after the extension had been granted and those orders have no effect on the extension.

Accordingly, the extension granted to Mrs. Tividad was still in effect on March 28, 1974, when she went to settlement on her former residence in New Orleans, Louisiana, and the attempt by the VA to later revoke that extension is of no effect. Therefore, Mrs. Tividad may be reimbursed for the real estate expenses incurred incident to that sale.

In reviewing Mrs. Tividad's claim for reimbursement, we find on the current record that she may be reimbursed for the following expenses incident to the sale of her residence:

Real estate commission	\$1,290
Prepayment penalty	170
Termite certification	20

With regard to the \$133 claimed for "legal and related costs," it is not entirely clear what items are encompassed within this amount, nor is it clear what local custom is regarding payment of the items included. We are instructing our Transportation and Claims Division to issue a settlement in accordance with this decision. However, we are further instructing them that issuance of that settlement should be held in abeyance for a period of 30 days to enable Mrs. Tividad to submit further evidence as to the questioned items, and to enable the VA to review that evidence for conformity to local custom. If no such evidence is received before the expiration of the 30-day period, settlement will be issued covering the allowable items set out above, and the items in dispute may be submitted as a separate claim.

Thomas D. Morris

Acting Comptroller General  
of the United States