

DOCUMENT RESUME

03550 - [A2713908]

[Real Estate Expenses--Time Limitation]. B-189775. September 22, 1977. 3 pp.

Decision re: Johnnie M. Black; by Robert P. Keller, Deputy Comptroller General.

Issue Area: Personnel Management and Compensation: Compensation (305).

Contact: Office of the General Counsel: Civilian Personnel.

Budget Function: General Government: Central Personnel Management (805).

Organization Concerned: Food and Drug Administration.

Authority: 5 U.S.C. 5724a. F.T.R. (FPMR 101-7), para. 2-6.1e. 49 Comp. Gen. 145. 49 Comp. Gen. 147. B-187677 (1976). B-187826 (1977).

The claimant appealed the denial of her claim for reimbursement of real estate expenses incurred incident to change of official duty station. The employee may not be reimbursed for the expenses since settlement on the sale of the former residence did not occur until more than 2 years after the date she reported to her new duty station. This time limitation has the force and effect of law and may not be waived or modified by the employing agency or GAO regardless of the extenuating circumstances. (Author/SC)

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DECISION



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

FILE: B-189773

DATE: September 22, 1977

**MATTER OF: Johnnie M. Black - Real Estate Expenses -
Time Limitation**

DIGEST: Food and Drug Administration employee who transferred from Detroit, Michigan, to Denver, Colorado, and reported to duty on February 11, 1974, may not be reimbursed for real estate expenses of sale of former residence since settlement did not occur until February 25, 1976, more than 2 years after reporting. Time limitation imposed by paragraph 2-6.1e of Federal Travel Regulations has force and effect of law and may not be waived or modified by employing agency or our Office regardless of extenuating circumstances. See 49 Comp. Gen. 145, 147 (1969).

By letter of July 11, 1977, Mrs. Johnnie M. Black has appealed the denial by our Claims Division of her claim for reimbursement of real estate expenses incurred incident to the change of her official station.

The record shows that Mrs. Black, an employee of the Food and Drug Administration, was transferred from Detroit, Michigan, to Denver, Colorado. Mrs. Black reported for duty at her new official duty station on February 11, 1974. On December 31, 1974, Mrs. Black was granted a 1-year extension of the initial 1-year settlement date limitation for reimbursement of real estate expenses in accordance with paragraph 2-6.1e of the Federal Travel Regulations (FPMR 101-7, May 1973), thus extending the period allowed for the sale of her Detroit residence until February 11, 1976. The Detroit residence was offered for sale by several realtors, but due to the depressed economic condition of that area and a lack of available mortgage money, a firm offer for the residence was not obtained until December 12, 1975.

In connection with the title search, the realtor discovered that the Internal Revenue Service (IRS) had filed a lien against the property for taxes owed by the employee's husband. Although the employee's attorney diligently tried to have the lien

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discharged by the IRS, numerous delays occurred and the lien was not discharged until February 25, 1976. Closing on the residence, therefore, was not consummated until February 26, 1976.

Mrs. Black submitted a claim with the Food and Drug Administration for real estate expenses in the amount of \$1,926.02. Due to extenuating circumstances which caused the closing to take place more than 2 years after the employee reported for duty at Denver, the Food and Drug Administration forwarded the claim to our Claims Division for settlement. On May 26, 1977, Claims Division denied the claim on the basis that the closing occurred more than 2 years after the employee reported for duty, and, therefore, the sale did not take place within the 2-year extended period allowed by paragraph 2-6.1e of the Federal Travel Regulations.

Mrs. Black appeals the denial by Claims Division on the grounds that the IRS lien was placed on the property without her knowledge, and because IRS delayed over 2 months before releasing the lien. Therefore, she argues that her claim for real estate expenses should be allowed even though the sale was not completed within the 2-year limitation period.

The reimbursement to Federal employees of certain expenses incurred in connection with residence transactions incident to a transfer of duty station is governed by section 5724a(a)(4) of title 5, United States Code (1970), and regulations issued pursuant thereto. The applicable regulations are contained in the paragraph 2-6.1 of the Federal Travel Regulations, which provide in part:

"* * * To the extent allowable under this provision, the Government shall reimburse an employee for expenses required to be paid by him in connection with the sale of one residence at his old official station * * *;
Provided, That:


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"e. 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."

The above quoted regulation was promulgated under the statutory authority of 5 U.S.C. § 5724a (1970) and has the force and effect of law and, therefore, may not be waived or modified by either the employing agency or our Office. See 49 Comp. Gen. 145, 147 (1969); Matter of Robert J. Dion, B-187677, December 3, 1976. This is true regardless of the presence of extenuating circumstances, such as a depressed real estate market. See Matter of William W. Treptow, B-187826, February 24, 1977. The delay associated with the discharge of the Federal tax lien provides no basis for this Office to waive or modify the applicable regulation.

In view of the above, the settlement by our Claims Division denying Mrs. Black's claim for reimbursement of real estate expenses is sustained.


Deputy Comptroller General
of the United States