

*McCase
PHL
118641*

DECISION



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

FILE: B-204467

DATE: June 8, 1982

MATTER OF: B. L. Gordon - Allowability of Residence
Transaction Expenses - Employees Returning
from Hawaii for Separation

DIGEST:

1. If an authorized certifying officer presents a legal question to our Office which is general and recurring in nature, we will treat the request as one from the head of the agency and will render a decision under the authority of 31 U.S.C. § 74 (1976), notwithstanding the absence of a specific voucher.
2. Federal employees returning to the continental United States from Hawaii, a post of duty outside the continental United States, for separation are not entitled to reimbursement of real estate expenses incurred in the sales of their residences in Hawaii.

Are Federal employees returning from posts of duty outside the continental United States for separation entitled to reimbursement of real estate expenses incurred in the sales of their residences at their post of duty? For the following reasons, we answer this question negatively.

This question is presented for decision by Mr. B. L. Gordon, an authorized certifying officer, Department of Energy, Las Vegas, Nevada. It has been raised by several Federal employees presently employed by the Department of Energy who have, or expect to have, a post of duty which is outside the continental United States. In the present case, the post of duty involved is Hawaii. The employees intend to submit claims for reimbursement of real estate expenses which they will incur in selling their residences at their post of duty upon their return to the continental United States for separation. Because the situation presents a general legal question, and appears to be one which will recur, we will treat the request as one from the head of the agency and will render a decision under the authority of 31 U.S.C. § 74 (1976),

B-204467

notwithstanding the absence of a specific voucher generally required by 31 U.S.C. § 82d (1976). See 55 Comp. Gen. 652 (1976).

The employees who raised this question argue that our Office's previous consideration of this matter in 54 Comp. Gen. 991 (B-183449, May 29, 1975) misinterpreted and took out of context the relevant sections of the United States Code and the Federal Travel Regulations (FTR). That decision involved an employee whose post of duty was in Alaska and whose position was abolished. The employee then returned to the continental United States for separation by retirement. He claimed that he was entitled to reimbursement of real estate expenses in selling his Alaska residence. Our decision, however, denied his claim since we viewed the pertinent statutes and regulations as permitting such reimbursement only when there is a permanent change of duty station, and we found that a return from Alaska for a purpose other than assuming a new Government position does not constitute a permanent change of station. We further held that, under 5 U.S.C. § 5724(d) (1970), when an employee transferred to Alaska returns to a location in the 48 States, he is considered the same as a new appointee for purposes of travel and transportation expenses, and as such is not entitled to reimbursement by the Government for real estate expenses. See 5 U.S.C. § 5722 (1970).

Our reexamination of the relevant statutes and regulations shows that the employees' arguments are not sound, and that our previous decision in 54 Comp. Gen. 991 (1975) was correct in denying reimbursement of real estate expenses to an employee returning from a post of duty outside the continental United States for separation (or for any reason other than assuming a new Government position which constitutes a permanent change of station). We note that the relevant statutes and regulations have not essentially changed since our previous decision was issued on May 29, 1975. We will cite the versions currently in effect.

While the arguments of the employees in the present case go into some detail, they essentially can be viewed as claiming entitlement for real estate expenses since employees

returning from duty outside the continental United States for separation either (1) should be considered as employees transferred in the interest of the Government from one official station or agency to another for permanent duty, or (2) are entitled to such expenses under 5 U.S.C. § 5724(d) (1976).

Title 5 U.S.C. § 5724a(a) (Supp. III 1979) authorizes the real estate expenses in question for "an employee for whom the Government pays expenses of travel and transportation under section 5724(a) of this title." Such an employee under 5 U.S.C. § 5724(a) (1976) is defined as:

"(1) * * * an employee transferred in the interest of the Government from one official station or agency to another for permanent duty * * *." (Emphasis added.)

It is important to realize that the above statutory authorization for real estate expenses is distinct from the authorization for travel and transportation expenses under 5 U.S.C. § 5724(d) (1976) which will be discussed below.

There is, therefore, a statutory requirement that the transfer be for permanent duty. Return to the continental United States for separation by retirement or any other type of separation, however, cannot be considered permanent duty. The employees in such a situation would not satisfy one of the statutory criteria of 5 U.S.C. § 5724(a) (1976). Thus, they would not be entitled to reimbursement of real estate expenses.

In regard to the employees' second argument, we observe that 5 U.S.C. § 5724(d) provides as follows:

"(d) When an employee transfers to a post of duty outside the continental United States, his expenses of travel and transportation to and from the post shall be allowed to the same extent and with the same limitations prescribed for a new appointee under section 5722 of this title." (Emphasis added.)

B-204467

We also observe that, by virtue of 5 U.S.C. § 5721(3) (1976), Hawaii is not included in the definition of continental United States.

While under 5 U.S.C. § 5722 (1976) a new appointee to a post of duty outside the continental United States may receive travel and transportation expenses to and from that post of duty, such a new appointee clearly may not receive reimbursement for real estate expenses which are a distinct item of reimbursement authorized by 5 U.S.C. § 5724a(a)(4) (Supp. III 1979) discussed above. See 60 Comp. Gen. 71, 73 (1980); 54 Comp. Gen. 747 (1975); and FTR para. 2-1.5g(2)(c) (FPMR 101-7) (September 1981).

Since the employees in the present case must be considered in the same category as new appointees who are not entitled to reimbursement for real estate expenses because of the provisions of 5 U.S.C. § 5722 (1976) and 5 U.S.C. § 5724(d) (1976), we conclude that they are not entitled to such reimbursement.

Accordingly, the interpretation suggested by the employees is not permitted by the applicable statutory and regulatory provisions. They would not be eligible for reimbursement of residence transaction expenses upon their return to the continental United States for separation.

Milton J. Arolan
for Comptroller General
of the United States