



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Jack H. Hiller - Relocation Homesale
Program--Actual Residence

File:

B-229427

Date:

August 4, 1988

DIGEST

Under 5 U.S.C. § 5724c and its implementing regulations, in order to participate in the Guaranteed Homesale Program, an employee's dwelling must be his actual residence at the time he was first definitely informed by appropriate authority of his transfer to a new duty station. An employee leased his dwelling and lived in rental housing as a result of overseas transfer orders that were later revoked. He seeks to participate in the Program incident to a subsequent transfer about 15 months later to a location within the United States. Since he had leased his house as a result of the government's action he was unable to occupy it at the time of the subsequent transfer. Thus, he comes within the exception to the rule requiring occupancy at the time of transfer and is eligible to participate in the Program.

DECISION

Mr. Jack H. Hiller, a Department of the Army civilian employee assigned to the Presidio of Monterey in California, was issued permanent change-of-station (PCS) orders dated February 19, 1985, to West Germany. On the same date, Mr. Hiller, in preparation for his upcoming move, leased his house, with an option to purchase, for a 1-year period which could be extended for an additional year by the tenant.^{1/} Approximately 1 week later Mr. Hiller moved himself and his family into a rental house pending their travel overseas. However, by orders dated March 27, 1985, Mr. Hiller's PCS orders to West Germany were revoked. He was then unable to re-occupy his house due to the previously created leasehold

^{1/} The tenant did, in fact, exercise the option in February 1986, and extended the period of the lease an additional year to expire on February 28, 1987.

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estate. On May 30, 1986, Mr. Hiller was given PCS orders from Monterey, California, to Alexandria, Virginia, and it is for this move that Mr. Hiller seeks to participate in the Guaranteed Homesale Program for the sale of his house in Monterey, California.

The issue for our consideration is whether Mr. Hiller's house at his old duty station which he had leased to someone else qualifies as his residence at the time he was first informed that he was to be transferred to Alexandria, Virginia, so that it may be included in the Guaranteed Homesale Program.^{2/} See Joint Travel Regulations, vol. 2, para. C14000 (change No. 255, January 1, 1987).

Under the provisions of 5 U.S.C. § 5724a (1982), and the Federal Travel Regulations, paragraph 2-6.1 (Supp. 4, August 23, 1982), an employee may be reimbursed for the expenses of the sale of a residence at the old official station. Under 5 U.S.C. § 5724c (Supp. III 1985), the agency may enter into contracts to provide relocation services to carry out these provisions, including contracts for the purchase of an employee's residence. This is the authority for the Guaranteed Homesale Program. The Joint Travel Regulations provisions are based upon Federal Travel Regulations, paragraphs 2-1.4i and 2-6.1d (Supp. 1, effective November 1, 1981), incorp. by ref., 41 C.F.R. 101-7.003 (1985), which when read in combination generally establish that, in order for an employee to be eligible to participate in the Guaranteed Homesale Program, he must live in the residence at his old duty station at the time he is notified of his transfer and it must be the place from which he regularly commutes to and from work. See Gary M. Sudhoff, B-227786, Mar. 10, 1988.

We have, however, recognized some limited exceptions to the rule that the residence be the place from which the employee commutes in cases where an employee is away from the residence at the old duty station while on extended temporary duty, constantly in a travel status with no single official duty station, or performing a long-term training assignment contemplating a return to his permanent

^{2/} This request for an advance decision was presented by the Finance and Accounting Officer, Aberdeen Proving Ground, Maryland, and was forwarded through the Per Diem, Travel and Transportation Allowance Committee which assigned it Control No. 87-23.

duty station upon completion of training. See John E. Wright, 64 Comp. Gen. 268 (1985), and cases cited therein.

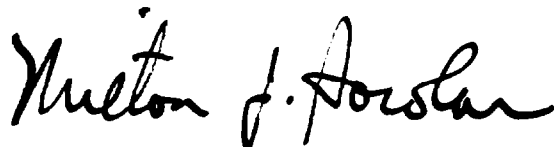
In the present case, Mr. Hiller leased his residence upon official notification of an upcoming permanent change of station to West Germany. He argues that "but for" the government's act of notifying him of the PCS move and subsequently cancelling the assignment, he would have been occupying the residence at the time of his transfer to Virginia and thus be eligible to participate in the Homesale Program.

We agree with Mr. Hiller. The purpose of the FTR provisions cited above requiring the employee to reside at and regularly commute from the residence in question is to insure that it is in fact the employee's residence at the time of transfer. The exceptions we have recognized by our decisions are based on the premise that the employee should not be penalized when he is prevented from occupying his residence at the time of transfer by an act of the government.

In the present case, the evidence is clear that Mr. Hiller actually resided at his house in Monterey when he received his orders transferring him to West Germany. He then leased the house to a tenant for 1-year with an option to extend for another year. The tenant exercised the option so that when Mr. Hiller was transferred to Alexandria, Virginia, the house was still occupied by the tenant under the lease. Hence, Mr. Hiller was prevented from occupying his house at his old duty station because of the government's action in transferring him overseas and then cancelling that transfer.

We conclude that Mr. Hiller would have occupied his Monterey residence, but for his having moved out on account of the PCS orders that were later cancelled. This brings his case within the scope of the exceptions we have previously recognized to the general rule requiring occupancy at the time of transfer.

Accordingly, we hold that Mr. Hiller qualifies for participation in the Guaranteed Homesale Program.

for 
Comptroller General
of the United States