



Comptroller General  
of the United States  
Washington, D.C. 20548

# Decision

**Matter of:** Katherine J. Allan - Surviving Spouse - Claim  
for Real Estate Expenses and Attorney Fees

**File:** B-235978

**Date:** October 26, 1990

## DIGEST

A transferred employee who had contracted to sell his residence at his old duty station and to purchase a residence at his new duty station died unexpectedly before either transaction was completed. His widow incurred expenses of \$20,500 to obtain releases from the contracts of sale and purchase, plus an attorney's fee. She may be reimbursed her expenses, including a reasonable attorney's fee, not to exceed the amount that would have been reimbursed had she completed the relocation to her deceased husband's new duty station.

## DECISION

The Director of the Defense Investigative Service (DIS) asks whether Mrs. Katherine J. Allan may be reimbursed the legal and other expenses she incurred in obtaining releases from her contractual real estate obligations following the death of her husband, Mr. Thomas R. Allan, a DIS employee who had recently been transferred to a new duty station. For the following reasons, Mrs. Allan may be reimbursed her expenses, not to exceed the amount she would have been reimbursed had she completed the relocation to her deceased husband's new duty station.

## BACKGROUND

Mr. Allan was transferred by his agency from Cherry Hill, New Jersey, to Baltimore, Maryland, on November 27, 1988. He was authorized reimbursement of relocation expenses, including reimbursement of the expenses for the sale of a residence and purchase of a new one. On December 28, 1988, Mr. and Mrs. Allan contracted to sell their residence in New Jersey. On January 1, 1989, Mr. and Mrs. Allan made a \$5,000 deposit as part of a contract to purchase a residence in Maryland.

On April 2, 1989, Mr. Allan unexpectedly died of a heart attack, leaving a widow and three minor children. At that time, he had completed neither the sale of his old residence

049859 | 142559

nor the purchase of the new one. Nevertheless, both contracts, although executory, were fully enforceable. Since Mrs. Allan wished to remain in New Jersey at her residence of many years, she sought, through counsel, to extricate herself from both contracts.

The buyers of the New Jersey residence refused to allow Mrs. Allan out of the contract of sale and brought an action for specific performance. At this point, Mrs. Allan, through counsel, obtained a release from the contract for \$18,000 in order to keep the house. She also was able to obtain a release from the contract to purchase the Maryland residence by allowing the seller to retain \$2,500 of the initial deposit of \$5,000 as liquidated damages. Thus, she incurred expenses of \$20,500 in obtaining the releases, as well as \$8,801.87 in legal fees related to these matters. She now seeks to be reimbursed for her total expenses of \$29,301.87.

#### OPINION

We have issued several decisions involving employees who died before their transfers were completed. In 47 Comp. Gen. 189, 192 (1967), we decided that the family of a deceased employee, who had recently transferred, could be reimbursed for expenses incurred or binding obligations entered into by the employee in connection with the sale or purchase of a residence incident to his transfer. We expanded the rule set out in 47 Comp. Gen. 189 in a later case, Gerard Wijsmuller, B-183389, Nov. 24, 1975, and did away with the requirement that the expense or obligation be incurred prior to the transferred employee's death. In Wijsmuller we specifically held that the surviving spouse and other dependents could be reimbursed for any expenses of transfer that would have been reimbursed had the employee survived. In reaching this conclusion, we recognized that:

". . . the purpose of the statute is to reimburse the expenses occasioned by the transfer of an employee, and since such expenses do not cease with his death, we do not regard the right to reimbursement for such expenses as ceasing with his death."

We recognize that here, in contrast to Wijsmuller, Mrs. Allan had not moved to the new duty station before the employee died. Nevertheless, binding legal obligations to purchase a new residence and to sell the old residence had been entered into before Mr. Allan died.

In our view Mrs. Allan would be treated the same as the surviving spouse in Wijsmuller if Mrs. Allan had completed the relocation to Maryland. In that event, she would have been entitled to reimbursement for the expenses of transfer,

including the costs of selling and buying a new residence, as if her husband had not died. See Wijsmuller, supra. Indeed, had she chosen to do this, it appears that she would have incurred reimbursable expenses in excess of the amount she is claiming. The agency estimates the total cost would be in excess of \$40,000.

Instead of moving, Mrs. Allan chose to stay at the old duty station. Generally, we have only allowed reimbursement of expenses in the cancelled transfer cases when the government itself and not the employee was the cause of the cancellation. Warren L. Shipp, 59 Comp. Gen. 502, 504 (1980); Joseph Salm, 58 Comp. Gen. 385, 387-88 (1979). Here, of course, the government did not cancel the transfer. On the other hand, we have not previously considered a case similar to this one where the widow of a deceased employee sought to extricate herself from having to relocate pursuant to a transfer. In this situation we believe that the Wijsmuller rationale may be extended to apply to Mrs. Allan's claim. We see no reason to require Mrs. Allan to relocate or sell her old residence in order to be reimbursed. Furthermore, we recognize not only that Mrs. Allan should not have to relocate away from friends and family to obtain reimbursement of her expenses, but also that it is sound economically inasmuch as her reimbursement is limited to the amount that she would have been reimbursed had she relocated to Maryland.<sup>1/</sup>

Under the unfortunate circumstances of this case, therefore, we hold that Mrs. Allan may be reimbursed for the costs of obtaining the releases from both real estate contracts in the total amount of \$20,500. As to the attorney's fee of \$8,801.87, this was a necessary expense for her to incur under the circumstances in which she found herself. Moreover, this fee appears reasonable to us in view of the services rendered and may be reimbursed to Mrs. Allan.

Accordingly, Mrs. Allan may be reimbursed her total expenses of \$29,301.87, provided that these expenses do not exceed the

---

<sup>1/</sup> We are not overruling or modifying our previous precedents in this area. In an appropriate situation, the surviving spouse may still complete the relocation and be reimbursed the allowable expenses of relocation. Our decision of today merely recognizes that the widow or widower does not have to relocate to obtain reimbursement.

total expenses she would have been reimbursed had she  
relocated to Maryland.

*Milton J. Acolar*  
for Comptroller General  
of the United States