



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

Decision

Matter of: Jesse Jackson, Jr.
File: B-251559
Date: March 31, 1993

DIGEST

Transferred employee purchased a residence in Mobile, Alabama, approximately 263 miles from his new duty station in Birmingham, Alabama. The employee's position requires considerable travel and he works a compressed work schedule of 4 days each week, with each Monday off. He maintains an apartment in Birmingham and when at headquarters, commutes to and from work from the apartment. The employee is not entitled to reimbursement of expenses incurred in the purchase of the Mobile residence. The requirement under the FTR, 41 C.F.R. § 302-1.4(k) (1992), that the employee "regularly commutes" from the residence in question, contemplates commuting on a daily basis, not just on weekends or occasionally during the week.

DECISION

This decision is in response to a request as to the propriety of reimbursing Mr. Jesse Jackson, Jr., an employee of the Office of Surface Mining (OSM), United States Department of the Interior (DOI) for expenses incurred in the purchase of a residence, in connection with his transfer from Pittsburgh, Pennsylvania, to Birmingham, Alabama, in December 1990.¹

Mr. Jackson's travel orders authorized reimbursement of real estate purchase expenses. Since his transfer, Mr. Jackson has maintained an apartment in Birmingham. When in Birmingham, Mr. Jackson commutes to and from work from the apartment.

Mr. Jackson purchased a residence in Mobile, Alabama, approximately 263 miles from Birmingham. He is the Field Office Director and is responsible for the states of Alabama, Mississippi, and Georgia. He states that his work requires considerable travel between these states and

¹The request was submitted by Mr. Roy E. Morris, Authorized Certifying Officer, OSM, DOI.

otherwise. Mr. Jackson also states that he works a compressed workweek of 4 days with each Monday off. He contends that when you consider his travel schedule and the compressed workweek, it is immaterial where he lives. He says, however, that he spends the majority of his off duty time at his home in Mobile.

Mr. Jackson reports that OSM officials were aware of his plans to purchase a residence in Mobile but did not mention the possibility of a conflict with the Federal Travel Regulation (FTR). He also points out that the Internal Revenue Service regulations use a different criteria to determine allowable moving expenses and, therefore, there should be some consistency between what applies for relocation purposes and tax purposes.

The OSM denied Mr. Jackson's reimbursement claim based upon our recent decision, Johnny W. Reising, B-238086, June 8, 1990. In that decision, the employee rented an apartment at his new duty station, Indianapolis, Indiana. He subsequently purchased a residence in Fairfield, Ohio, approximately 108 miles from Indianapolis. He worked a maxiflex alternative work schedule wherein during each 2-week pay period, he worked 9 hours a day for 8 days of the biweekly pay period and 8 hours on the 9th day, with 1 day off. The employee lived in Fairfield with his family on his day off, Monday, and on weekends. On the other 9 workdays, he stayed in the apartment and commuted to his duty station in Indianapolis.

In Reising we pointed out that the FTR, 41 C.F.R. § 302-1.4(j) [now (k)] provides, with respect to reimbursement of residence expenses, that "official station or post of duty means the residence or other quarters from which the employee regularly commutes to and from work." With respect to the purchase of a residence, we stated that this Office has consistently held that the requirement that the employee regularly commute from the residence in question contemplates commuting on a daily basis, not just on weekends or occasionally during the week. We held that since Mr. Reising did not "regularly commute" from his residence in Fairfield to his duty station in Indianapolis, that residence did not establish the basis for reimbursement of real estate purchase expenses.

Our reasoning and holding in Reising, supra, is controlling on the facts and circumstances involved in Mr. Jackson's claim. Although Mr. Jackson's position requires considerable travel, he works a 4-day compressed work schedule, with Mondays off each pay period, and spends the majority of his off duty time at his residence in Mobile, the fact remains that he does not "regularly commute" the approximately 263 miles from his Mobile residence to his

duty station in Birmingham, as required by section 302-1.4(k) of the Federal Travel Regulation.²

The assertion by Mr. Jackson that OSM officials were aware of his plans to purchase a residence in Mobile but did not mention the possibility of a conflict with the Federal Travel Regulation is not controlling. The facts that Mr. Jackson may not have been fully advised as to the requirements of the regulations or that he may not have fully understood such advice, do not provide a basis for us or the agency to allow payment of allowances contrary to the applicable requirements of the statutory regulations.³

In regard to the asserted inconsistency between the Federal Travel Regulation and regulations issued by the Internal Revenue Service, we note that federal employees' allowances for expenses incurred in connection with residence transactions are governed by Federal Travel Regulation provisions promulgated by the General Services Administration pursuant to 5 U.S.C. § 5724a (1988), while the Internal Revenue Service regulations are promulgated under different statutory provisions related to a different purpose. In any event, it is the Federal Travel Regulation which governs here.

Accordingly, the agency's denial of Mr. Jackson's claim for the real estate purchase expenses incurred in connection with his transfer from Pittsburgh to Birmingham is sustained.

J. F. Hinchman
James F. Hinchman
General Counsel

²See also Irving R. Warnasch, B-193885, June 8, 1979, Stanley H. Fretwell, B-186185, Nov. 15, 1976; Ellis M. Hershowitz, B-181415, Feb. 5, 1975.

³See Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947); Utah Power and Light Co. v. United States, 243 U.S. 389 (1917); Joseph Pradarits, 56 Comp. Gen. 131, 136 (1976); 44 Comp. Gen. 337 (1964).