



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Roger W. Montague
File: B-251211.2
Date: March 9, 1994

DIGEST

An employee's claim was denied for the expenses of his purchase of a residence in Cary, North Carolina, approximately 160 miles from Richmond, Virginia, incident to his transfer to Richmond because Cary is not within ordinary commuting distance of Richmond. He requested reconsideration, alleging that he actually commuted between Cary and Richmond during the five workweeks he lived there before being transferred to Texas. The record shows he purchased the residence in Cary because he hoped to be transferred there, and that because of using leave and occasionally working at his residence in Cary, he worked at Richmond for only five days during the five workweeks. This does not constitute "regularly commuting" between residence and duty station, as required under the Federal Travel Regulations, and the purchase of the residence may not be considered incident to the transfer to Richmond. Roger W. Montague, B-251211, Feb. 4, 1993, affirmed.

DECISION

Mr. Roger W. Montague asks that we reconsider our decision Roger W. Montague, B-251211, Feb. 4, 1993, which sustained his agency's denial of reimbursement of the real estate expenses he incurred in the purchase of a residence in Cary, North Carolina, which he claimed incident to his transfer from Culpeper, Virginia, to Richmond, Virginia. For the reasons explained below, we affirm our February 4, 1993 decision.

BACKGROUND

When the Soil Conservation Service transferred Mr. Montague from Culpeper to Richmond in January 1992, his residence at his old duty station was in Earlysville, Virginia, 46 miles from Culpeper and 69 miles from Richmond. Shortly thereafter, he and the agency entered into a formal agreement, effective February 10, 1992, pursuant to the Federal Flexible Workplace Project under which Richmond was stated

to be his official duty station and his residence in Earlysville was designated his alternate worksite. This allowed him to do a substantial part of his work at home, making it unnecessary for him to commute daily between there and his duty station in Richmond. In late June 1992 he purchased a residence in Cary, North Carolina, and moved there in July, approximately 160 miles from Richmond. He indicated that he purchased the residence in Cary in the expectation that he would be transferred to North Carolina from Richmond, and he claimed the real estate expenses in connection with its purchase as incident to his transfer from Culpeper to Richmond. Although he attempted to negotiate with his agency an agreement designating his residence in Cary as his alternate worksite similar to the one he had for his residence in Earlysville, such an agreement was not consummated, and the agency advised him that his work would be in Richmond. He was subsequently transferred to Texas.

In our prior decision, we in effect agreed with the agency and held that since Cary was outside the commuting distance of Richmond and since Mr. Montague did not in fact regularly commute from Cary to Richmond, the real estate expenses for the purchase of the Cary residence could not be reimbursed because the controlling regulations allowing reimbursement for the purchase of a residence incident to a transfer limit it to a residence "from which the employee regularly commutes to and from work."¹

Mr. Montague on appeal argues that he did in fact "regularly commute" in the circumstances of this case from his Cary residence to Richmond during the short five workweek period of time before he was reassigned to Texas effective August 9, 1992, and he offers time and attendance reports and his notes from meetings as evidence.

OPINION

Our decisions have held that "regularly commutes" between a residence and duty station means commuting on a daily basis, not just on weekends or occasionally during the month. Mark S. Alcorn, B-239108, Mar. 15, 1991. The records Mr. Montague has furnished indicate that when he returned to work during the workweek beginning on July 6 after being on leave moving into the Cary residence, he only commuted between Cary and Richmond for one partial workday - the rest

¹See Federal Travel Regulations, 41 C.F.R. § 302-1.4(k) (1991), which implements the statutory authority in 5 U.S.C. § 5724a(a)(4)(A), authorizing reimbursement of expenses of the "purchase of a home at the new official station."

of the workdays being accounted for by annual or sick leave.² The second and third workweeks were very similar to the first - only one partial or one full workday in Richmond with the rest of the workdays being accounted for by annual or sick leave or permission to work at home. In the fourth workweek, Mr. Montague traveled to Richmond for a full workday, stayed the night in a motel, worked a partial day the next day and then returned to Cary on sick leave. The rest of the workdays were accounted for by sick leave or travel to Washington, D.C., to discuss a number of issues including asking for help in "getting me out of the situation in Richmond." The last workweek before the reassignment, Mr. Montague did not work at all in Richmond, based upon permission he obtained during his travel to Washington. Thus for five workweeks, Mr. Montague spent only 5 days in Richmond.

Commuting only once a week for the first three weeks between Cary and Richmond and using the large amounts of annual and sick leave for the rest of the work days was not a sustainable course of conduct, and it did not constitute "regularly commuting". In the only week Mr. Montague worked two consecutive workdays at his duty site in Richmond, he spent the night in a motel after the first workday, rather than commuting daily between Cary and Richmond. And in his last week of assignment to Richmond, he did not commute at all. Thus, he did not commute daily or "regularly commute" between Cary and Richmond for any of the five workweeks he lived there before being transferred to Texas. Also, although Mr. Montague apparently received permission to work some particular days at home in Cary, his Cary residence was never denoted as a alternative duty site, and the selection of Cary as his residence bore no relationship to his new duty station, Richmond. Compare B-186185, Nov. 15, 1976. Accordingly, our decision of February 4, 1993, is affirmed.

Seymour Epps
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for

²There was a misunderstanding about whether Mr. Montague had approval to work at his residence in Cary on July 6, but since approval for this one day was unrelated to approval to work at home for other days during the 5 workweek period, it is unnecessary to resolve it.