

**DECISION**

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

FILE:

B-182564

DATE: NOV 26 1975

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97675

MATTER OF:

Morris Wiseman - Extension of Settlement Date  
Limitation

DIGEST:

Transferred Air Force employee requested extension of time to settle house sale under 2 JTR para. C8350 because renovation was not complete. Extension was denied by Civilian Personnel Officer based upon restrictive interpretation of JTR. After several appeals Headquarters USAF authorized extension, and successor Civilian Personnel Officer approved it. Extension is valid even though approved more than 2 years after effective date of transfer. That portion of Matter of Daryl L. Mahoney, B-181611, December 26, 1974, requiring approval within 2 years will no longer be followed.

This is a reconsideration of Settlement Certificate Z-2522874, issued by our Transportation and Claims Division on February 4, 1974, which denied Mr. Morris Wiseman's claim for reimbursement of real estate expenses incurred incident to the sale of his residence at his old duty station.

Under the authority of Department of the Air Force Travel Authorization C1000-31-72, issued September 1, 1971, Mr. Morris Wiseman was transferred from the Frankford Arsenal, Philadelphia, Pennsylvania, to the Air Force Systems Command, Andrews Air Base, Camp Springs, Maryland, to which he reported on September 12, 1971. Beginning long before he knew of his transfer, Mr. Wiseman had contracted for extensive remodeling work on his residence at his old duty station. The building permit for the work was issued October 25, 1968. At the time of his transfer, the work was not completed, and Mr. Wiseman was advised by a real estate broker that it would be extremely difficult to sell the property unless the renovation work was completed. Following his transfer, Mr. Wiseman found that the cost of mortgage payments for his former residence, rent payments for his new residence, and payments to the contractor doing the renovation work were simply too great. Mr. Wiseman, therefore, terminated his agreement with the contractor and began travelling to New Jersey on weekends to complete the remodeling work himself. Finally, on September 2, 1972, Mr. Wiseman executed a contract to sell his former residence in Cherry Hill, New Jersey, and the settlement of the contract took place on December 4, 1972.

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We note the following items on the settlement sheet, all as credits to the buyer:

For completing repairs as agreed	\$9,650.00
Escrow for completion of various repairs	500.00
Burner repairs	70.05

On December 12, 1972, Mr. Wiseman submitted a claim in the amount of \$2,869 for expenses incurred incident to that sale. On December 26, 1972, the items claimed were certified as being reasonable in amount and customarily paid by the seller in the area where the property was located.

By letter of March 20, 1973, from Headquarters, 1st Composite Support Group (HQ Comd, USAF), over the signature of the Civilian Personnel Officer, "For the Commander," Mr. Wiseman's request for a 1-year extension of the settlement date limitation was denied. Therefore, his claim, in its entirety, was also denied.

We note that there is no written request for this extension in the file. We were advised by Mr. Wiseman that there were continuing discussions between himself and the Civilian Personnel Office relating to the extension. An oral request for an extension of the settlement date limitation was sufficient at that time since the regulations then in effect only required that the grant or denial of the request be written. B-175842, June 1, 1972. In any event Mr. Wiseman's claim could be viewed as a written request for an extension or at least as a confirmation of the prior oral request.

The Civilian Personnel Officer's letter of denial to Mr. Wiseman stated that:

"2. Acceptable reasons for granting extensions outlined in the Joint Travel Regulations, Volume II, paragraph C8350, item 4, are quite specific and the delay cited in your letter is not applicable."

In the letter there is a further discussion of revisions in the regulations that became effective subsequent to the expiration of Mr. Wiseman's initial year for the completion of real estate transactions. That change, which became effective October 26, 1972, removed the requirement that a sale or purchase contract be executed within the initial year for there to be an extension of the settlement date limitation. Because this

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change became effective after Mr. Wiseman's initial year had expired, it cannot be applied to his case; it was not a retroactive change.

We note several references by Mr. Wiseman to a letter, B-175781(2), July 24, 1972, from this Office to Arthur F. Sampson, then Acting Administrator, General Services Administration. Mr. Wiseman refers to that letter as being a decision of this Office, and he contends it is supportive of his position regarding the application of the above discussed change in the regulations. However, the letter is not a decision and has no legal value as a precedent. The letter is simply an expression of the views of this Office regarding the problems revealed in the application of the then existing regulations on the extension of the settlement date limitation and recommending certain possible changes that could be made in the regulations to correct those problems.

By letter of March 22, 1973, Mr. Wiseman appealed the denial of his claim and requested that the matter be submitted to the General Accounting Office (GAO) for settlement. The matter was submitted to GAO through the Air Force Accounting and Finance Center with a recommendation that the claim be disallowed. By Settlement Certificate issued by our Transportation and Claims Division on February 4, 1974, Mr. Wiseman's claim was disallowed because the then applicable regulations required approval of the extension of the settlement date limitation by the agency, and the agency had refused to approve the extension.

By letter of March 5, 1974, Mr. Wiseman requested review of his claim by Headquarters, United States Air Force (USAF), citing our letter to the General Services Administration, B-175781(2), July 24, 1972, and contending that the liberalized standards regarding the extension of the settlement date limitation should be applied to his case. By letter of March 26, 1974, from the Directorate of Civilian Personnel, Headquarters, USAF, the Civilian Personnel Officer at Andrews Air Force Base was advised that it was within his authority to grant the extension of time in Mr. Wiseman's case. The letter pointed out that the acceptable reasons for granting an extension listed in JTR Vol. 2, para. C8350, were illustrative, not exclusive as stated in the letter initially denying Mr. Wiseman's claim. This interpretation of that provision is in accord with the views of this Office. See B-174500, December 21, 1971. However, by letter of April 3, 1974, the Civilian Personnel Officer at Andrews again declined to grant Mr. Wiseman's request for an extension.

Mr. Wiseman, by letter of April 25, 1974, again requested review of his claim by Headquarters, USAF. By letter of June 11, 1974, the Director

of Civilian Personnel Headquarters, Headquarters Command, USAF, advised Headquarters, 1st Composite Support Group, Andrews Air Force Base, that the extension requested by Mr. Wiseman should be approved. Thereupon, David L. Harris, the Civilian Personnel Officer, 1st Composite Support Group, by a letter dated June 28, 1974, advised Mr. Wiseman that Air Force Headquarters "has approved your request for an extension of the time limitations contained in JTR Volume 2, paragraph CS350." On June 25, 1974, Mr. Harris signed Mr. Wiseman's claim approving it for payment in the amount claimed. The matter was not ended, however, because the Accounting and Finance Officer, 1139th Comptroller Services Squadron, Bolling Air Force Base, by letter of August 14, 1974, submitted the case to our Transportation and Claims Division for reevaluation.

By letter of September 25, 1974, Transportation and Claims Division asked Mr. Wiseman to furnish evidence that the person approving the extension was authorized by the Secretary of the Air Force to do so. Mr. Wiseman referred the letter to Mr. Harris, Civilian Personnel Officer, 1st Composite Support Group, for reply. Mr. Harris, who on June 28, 1974, had stated that Mr. Wiseman's extension had been approved, replied on October 17, 1974, as follows:

"Notwithstanding the USAF decision, the undersigned, as authorized designee, declines to personally approve the extension based on a review and evaluation of the facts and circumstances in the case. The question, therefore, revolves around the authority of Headquarters Command to approve such extensions. At the next higher level in the direct chain of command, with full authority over subordinate activities, there appears to be little doubt as to that authority. However, for a specific statement to that effect, an inquiry should be addressed to HQ COMD USAF/DPC, Bolling AFB, DC, 20332."

Finally, by letter of December 4, 1974, Mr. E. M. Vitagliano, Mr. Harris' successor as Civilian Personnel Officer of the 1st Composite Support Group, stated that he had reviewed Mr. Wiseman's file, and that:

"Based upon my review and evaluation of the facts and the circumstances surrounding this case, as the designated approving official, it is my decision that the reasons set forth by the claimant, Mr. Wiseman, are acceptable and

hereby approved. Specifically, the construction and remodeling initiated by Mr. Wiseman before he had knowledge of a PCS move and substantially underway at the time of the PCS constitute a circumstance beyond Mr. Wiseman's control and is recognized as an acceptable reason for granting an extension under Item 4, JTR, paragraph C8350."

In September 1972 when the initial year allowed for Mr. Wiseman to go to settlement for real estate transactions expired, the governing regulations were Office of Management and Budget Circular No. A-56 (Revised August 1971), specifically section 4.1e, the provisions of which were carried over into 2 JTR para. C8350 (Ch. 77, March 1, 1972) which provided, in pertinent part, that:

- "4. the settlement dates for the sale and purchase or lease termination transactions, for which reimbursement is requested, are not later than 1-year after the date on which the employee reported for duty at the new station, such year to commence with the day following the reporting date and end at the close of the first anniversary of the day the employee reports for duty, except that an appropriate extension of time may be authorized by the commanding officer of the activity bearing the cost, or his designee, when settlement is necessarily delayed because of litigation; or that an additional period of time not in excess of 1-year may be authorized or approved by the commanding officer of the activity bearing the cost, or his designee when it is determined that circumstances justifying the exception exist which precluded settlement within the initial 1-year period of the sale/purchase contracts or lease termination arrangement entered into in good faith by the employee within the initial 1-year period

(the circumstances on which the determination is made to justify the exception will be set forth in writing);

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"Acceptable reasons for granting extensions under the foregoing item 4 include:

- "1. any strike which unduly delays construction or remodeling beyond the 1-year limitation,
- "2. civil disturbance or similar situation rendering property in the affected area more difficult to sell,
- "3. pending condemnation proceedings when actual litigation has not been instituted,
- "4. extended temporary duty precluding taking timely action.

"Delays attributed to normal market fluctuations and ignorance of the prescribed limitations will not constitute justification for an extension. Doubtful cases may be submitted to the appropriate headquarters office, through channels, with a full statement of the facts."

As noted earlier, the examples of possible reasons for granting extensions are illustrative only; they are not all inclusive and restrictive. In our opinion, the facts in Mr. Wiseman's case would have justified the granting of an extension from the time of his initial request.

On December 4, 1974, the new Civilian Personnel Officer reviewed this matter and approved Mr. Wiseman's request for the extension of the settlement date limitation. The settlement took place within the period of the extension, and the amounts claimed were approved as conforming to local custom. However, the approval of the extension was given after the expiration of the maximum 2-year period allowed by the regulations. Thus, the issue that must be resolved in this decision is whether, under the applicable regulations, the extension of the time limitation for settlement must be approved within 2 years of the transfer date.

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In Matter of Daryl L. Mahoney, B-181611, December 26, 1974, we stated that such an extension must be approved within 2 years of the effective date of the transfer. However, an examination of Matter of Mahoney, supra, shows that the settlement in that case took place more than 2 years after the effective date of the transfer, so that, no matter when an extension was granted, there was no authority for the reimbursement of any real estate expenses incurred by the employee therein. Thus, the requirement of approval of an extension within 2 years is obiter dictum. It also would place the burden of administrative processing delays entirely on the employee.

In the case at hand, at all stages, Mr. Wiseman has been exceedingly diligent in filing his claim and pursuing all possible avenues of appeal. To penalize him, by requiring agency review and other administrative appeals to be completed within 2 years, would be to impose a condition not found in the statute or regulations. Our reevaluation of the dictum in Matter of Mahoney, supra, leads us to the conclusion that it should not be followed, as it would lead to unnecessarily restrictive results. Therefore, that portion of Matter of Mahoney, supra, that requires an agency to finally approve a request for an extension of a settlement date limitation within 2 years of the effective date of a transfer is overruled and will no longer be followed.

Accordingly, Mr. Wiseman's claim may be allowed in the full amount sought, and our Claims Division will be instructed to issue a settlement in the amount of \$2,869.

Deputy

**R. J. KELLER**

Comptroller General  
of the United States