

DECISION



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

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FILE:

DATE: DEC 30 1975

MATTER OF: ~~A-185188~~

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DIGEST:

Walter C. Caskey-Reimbursement for real estate expenses-Time Limitation

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Employee who transferred from Osceola, Wisconsin to Rosemount, Minnesota, is not entitled to reimbursement for expenses incurred in connection with purchase of home at his new duty station since final settlement did not occur within the time limitation prescribed by OMB Circular A-56 section 4.1e, revised August 17, 1971, the travel regulation in effect at the time of the transfer, nor within the time limitation prescribed by paragraph 2-6.1e of the FMR 101-7, May 1973, the travel regulation in effect at the time of settlement.

This is a consideration of an appeal by Mr. Walter C. Caskey from a settlement of our Transportation and Claims Division (TCD) dated July 31, 1975 (Settlement Certificate No. 2-2570304). That settlement disallowed Mr. Caskey's claim for reimbursement of real estate expenses incurred in connection with the purchase of a new residence upon transfer of his official duty station as an employee of the Federal Aviation Administration (FAA).

The record indicates that Travel Order No. H-C-21-047-0 was issued on September 19, 1971, authorizing a permanent change of duty station from Osceola, Wisconsin to Rosemount, Minnesota, and that Mr. Caskey was to report at his new duty station on that date. Claimant was reimbursed the allowable real estate expenses incurred in connection with the sale of his home at his old official duty station in Osceola. The closing on that residence took place on October 3, 1972. Pursuant to a desire to build a residence at his new official duty station in Rosemount, claimant, on August 3, 1973, entered into a purchase agreement on a house to be constructed. After completion of construction, the mortgage closing was accomplished on December 21, 1973.

Claimant alleges that the delay in purchasing his new residence in Rosemount was partially caused by the fact that he had been stationed in Osceola for only six months, and, therefore, his home in Osceola was still under construction at

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the time of the transfer. Claimant decided to complete his old residence before selling it. Consequently, the subsequent purchase of the residence at the new duty station was delayed considerably.

Upon completion of the settlement, the claim for reimbursement of expenses in connection with the purchase of the home at the new duty station in the amount of \$243.50 was forwarded by the FAA to TCD for certification since the agency had determined that there was no basis under the current regulations upon which reimbursement of Mr. Caskey's claim could be founded. Concurring with the agency's determination, TCD disallowed the claim on July 31, 1975.

Reimbursement to Federal employees for certain expenses of the sale and purchase of residences as a result of transfers is governed by Section 5724a (a)(4) of title 5, United States Code (1970), and regulations issued pursuant thereto. At the time of Mr. Caskey's transfer, the applicable statutory regulation was Office of Management and Budget Circular No. A-56, revised August 17, 1971, which provided in pertinent part as follows:

"SECTION 4. ALLOWANCES FOR EXPENSES INCURRED
IN CONNECTION WITH RESIDENCE TRANSACTIONS

"4.1 Conditions and requirements under which allowances are payable. To the extent allowable under this provision, the Government will reimburse an employee for expenses required to be paid by him in connection with the sale of one residence at his old official station; purchase (including construction) of one dwelling at his new official station; or the settlement of an unexpired lease involving his residence or a lot on which a mobile home used as his residence was located at the old official station; provided that:

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" e. Time limitation. The settlement dates for the sale and purchase or lease termination transactions for which reimbursement is requested are not later than one (initial) year after the date on which the employee reported for duty at the new official station, except that (1) an appropriate extension of time may be authorized or approved by the head of the agency or his designee when settlement is necessarily delayed because of litigation, or (2) an additional period of time not in excess of one year may be authorized or approved by the head of the agency or his designee when he determines that circumstances justifying the exception exist which precluded settlement within the initial one-year period of the sale/purchase contracts or lease termination arrangement entered into in good faith by the employee within the initial one-year period. The circumstances which are determined by the head of the agency or his designee to justify the exception under (2) above shall be set forth in writing."

Accordingly, reimbursement is authorized only if settlement takes place within one year following the date on which an employee reports for duty at his new duty station unless an extension has been granted. The December 21, 1973 closing date was well beyond the one-year period following the date on which Mr. Caskey reported for duty at his new station. Mr. Caskey states that he was unaware of the need to request an extension or he would have made such a formal request. The record indicates that although there was no formal request for an extension of time nor any formal determination by the FAA granting such an extension, there may have been an informal agreement between Mr. Caskey and the Sector Administrative Officer that an extension had been approved. (See letter of June 21, 1974, from Mr. Joe B. Crees to Chief, Airway Facilities Division AGL-400). Section 4.1e, however, gives only two circumstances in which an extension beyond the initial one-year period may be granted by the agency. An extension may be granted if there are delays caused by litigation or, in appropriate circumstances, if a sale/purchase contract had been entered into by the employee in good faith within the initial one-year period. Since the record discloses no litigation and the contract of sale was not entered into within the initial one-year period following

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the date claimant reported for duty at Rosemount, neither of these exceptions are applicable in the instant case, and any extension of time was unauthorized. Between May 1, 1973 and September 19, 1973, the end of the two-year period following the date Mr. Caskey reported for duty at Rosemount, Mr. Caskey could have requested an extension under para. 2-6.1c of the Federal Travel Regulations (FTR 101-7) which took effect on May 1, 1973. Para. 2-6.1c provides for up to a one-year extension regardless of the reasons therefore, so long as it is determined that the particular residence transaction is reasonably related to the transfer of official station. However, Mr. Caskey failed to make a written request as required by para. 2-6.1c, and any oral understanding he may have reached with the Sector Administrative Officer was not authorized.

Even if an extension were authorized under either section 4.1c of OMB Circular A-56, revised August 17, 1971, or under para. 2-6.1c of FTR 101-7, May 1973, in the absence of litigation it could not operate to extend the time limitation beyond two years for the purchase of the new residence. Mr. Caskey did not go to final settlement until December 21, 1973, more than twenty-seven months after the date he reported for duty at Rosemount, although he argues that he complied with the maximum two year limitation found in either the old or current regulations. As he stated, "I feel that I met this requirement because my date of purchase was August 3, 1973 well within the 2 year limit." Unfortunately for Mr. Caskey, both sets of regulations use the date of settlement, rather than the date of purchase, as the determinative factor in deciding whether the time limitation has been complied with. Our decisions have held that for purposes of reimbursing real estate expenses incident to transfer of duty station, the date of final settlement, rather than the date the purchase agreement, must be utilized. See B-179240, August 27, 1973 and B-181611, December 26, 1974.

Accordingly, the settlement of July 31, 1973, by the TCD disallowing the claim of Mr. Caskey for reimbursement of real estate expenses incurred incident to the purchase of his residence at his new official duty station is hereby sustained.

R. F. Keller

Deputy Comptroller General
of the United States