

DOCUMENT RESUME

03213 - [A2413544]

[Change of Permanent Duty Station]. B-109457. August 23, 1977. 6 pp.

Decision re: Lawrence A. Ruh; by Robert F. Keller, Acting Comptroller General.

Issue Area: Personnel Management and Compensation (300).
Contact: Office of the General Counsel: Civilian Personnel.
Budget Function: General Government: Central Personnel Management (805).

Organization Concerned: Department of the Army.

Authority: Truth in Lending Act, title I (P.L. 90-321). 31 U.S.C. 74. 28 U.S.C. 1346(a)(2). 28 U.S.C. 1491. 28 U.S.C. 2401. 28 U.S.C. 2501. 12 C.F.R. 226.4(a)(3) et seq. B-183972 (1976). B-182079 (1975). B-177439 (1973). B-174804 (1972). 54 Comp. Gen. 638. F.T.R. (FPMR 101-7), para. 2-8.2c. F.T.R. (FPMR 101-7), para. 2-5.2a. F.T.R. (FPMR 101-7), para. 201.5b(1). F.T.R. (FPMR 101-7), para. 2-6.2d.

The claimant appealed a decision denying his request for reimbursement of expenses incurred incident to a directed but cancelled change of permanent duty station. The employee, who was reimbursed for relocation expenses incident to a transfer which resulted from a transfer of function, may also be reimbursed for temporary storage and temporary quarters subsistence expenses incurred incident to a subsequent directed transfer, even though it was cancelled. However, a loan fee incurred incident to the directed transfer may not be reimbursed. (Author/SC)

3544

03213

Dolin
Civ. Per.

DECISION



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

FILE: B-189457

DATE: August 23, 1977

MATTER OF: Lawrence A. Ruh - Change of Permanent
Duty Station

DIGEST: Army employee reimbursed relocation expenses incident to transfer from Frederick, Maryland, to Washington, D.C., as a result of a transfer of function, may also be reimbursed temporary storage and temporary quarters subsistence expenses incurred incident to a subsequent directed transfer from Washington, D.C., to Montgomery, Alabama, even though the second transfer was cancelled. A "loan fee" which is a finance charge within the definition of that term in 12 C.F.R. § 226.4(a)(3) (1977) may not be reimbursed pursuant to Federal Travel Regulations (FPMR 101-7) para. 2-6.2(d) (May 1973).

This action involves an appeal of a decision of our Claims Division, Z-2739856, April 21, 1977, denying the claimant's request for reimbursement of certain expenses incurred incident to a directed but cancelled change of permanent duty station. The facts are as follows: Lawrence A. Ruh was a civilian computer systems analyst with the United States Army, stationed at Fort Detrick, Maryland. On October 23, 1974, Mr. Ruh was notified of a transfer of function and informed that he could transfer to Walter Reed Army Medical Center (WRAMC), Washington, D.C. Mr. Ruh was transferred, effective February 2, 1975. During this period, prior to his transfer to WRAMC, Mr. Ruh became aware that he might be further transferred to Montgomery, Alabama. In anticipation of such transfer, he put his Frederick, Maryland, residence up for sale in December 1974, having been assured that even if he were not transferred to Montgomery he would be reimbursed for relocation expenses incident to his transfer from Fort Detrick to WRAMC. Subsequently, on March 28, 1975, Mr. Ruh received a travel authorization directing his transfer to Montgomery, effective May 1, 1975. This effective date of transfer was extended twice and the transfer to Montgomery was finally cancelled on August 20, 1975.

Mr. Ruh claims that he is entitled to reimbursement of \$132.27 for 70 days of storage for his household goods, \$1,000 for temporary quarters and subsistence, and a loan fee from the sale of his

B-189457

Frederick, Maryland, residence in the amount of \$1,512.50. Our Claims Division denied these claims because Mr. Ruh had received \$250.40 for storage of household goods for 60 days, and had further received temporary quarters and subsistence expenses for a 30-day period in the amount of \$474.28. The loan fee was held to be non-reimbursable as an item of interest collected by the lending institution. Denial of Mr. Ruh's claims for storage and temporary quarters subsistence expenses was predicated on Federal Travel Regulations (FTR) (FPMR 101-7) para. 2-8.2c (May 1973) which provides:

"c. Temporary storage time limit. The time allowable for temporary storage shall not exceed 60 days provided that an additional 30 days may be allowed an employee who returns to his place of actual residence for leave prior to serving a new tour of duty outside the conterminous United States either at a different post of duty or at the same post of duty if the storage is in lieu of furnished quarters or a quarters allowance." (Emphasis added.)

Paragraph 2-5.2a of the FTR further provides:

"a. Length of time allowed and location of new official station. Subsistence expenses of the employee for whom a permanent change of station is authorized or approved and each member of his immediate family (defined in 2-1.4d) shall be allowed for a period of not more than 30 consecutive days while the employee and family necessarily occupy temporary quarters and the new official station is located in the 50 States, the District of Columbia, United States territories and possessions, the Commonwealth of Puerto Rico and the Canal Zone * * *." (Emphasis added.)

Because these regulations are statutory with the force and effect of law they may not be waived, even under extenuating circumstances. 54 Comp. Gen. 638 (1975) and B-174804, February 14, 1972.

Our Claims Division denied Mr. Ruh's claim for storage and temporary quarters subsistence expenses for periods in excess of 60 and 30 days, respectively, on the assumption that he was entitled to relocation expenses incident to a single transfer. Mr. Ruh was

B-189457

actually subject to two transfers: one from Fort Detrick, Maryland, to WRAMC, Washington, D. C., and one from WRAMC to Gunter Air Force Base (AFB), Montgomery, Alabama. The second transfer, from WRAMC to Gunter AFB was directed but subsequently cancelled. There appears to be some confusion about the treatment of this cancelled transfer and its relation to the accomplished transfer from Fort Detrick to WRAMC, both on the part of our Claims Division and on the part of the Army.

The regulations cited above pertain to individual transfers, and the reimbursable periods contained therein apply to each transfer undertaken. See B-182079, March 18, 1975. Because Mr. Ruh was subject to two separate transfer actions, he is entitled to temporary quarters and storage expenses incurred incident to each transfer. This is true even though the anticipated transfer from WRAMC to Gunter AFB was never effected inasmuch as an employee who incurs expenses in anticipation of a transfer which is ultimately cancelled may be reimbursed relocation expenses actually incurred. See B-177439, February 1, 1973, and decisions cited therein.

The record suggests that the relocation expenses which Mr. Ruh has been paid were for expenses incurred incident to a transfer from Montgomery, Alabama, to Washington, D. C. This is clearly erroneous, however, as Mr. Ruh's directed transfer to Montgomery was cancelled. While the employee's motivation in selling his Frederick, Maryland, residence is not entirely clear, we believe that the relocation expenses for which he has already received reimbursement may properly be regarded as incident to the initial transfer from Fort Detrick, Maryland, to WRAMC, Washington, D. C. Paragraph 2-1.5b(1) of the FTR provides:

"b. Short distance involved.

"(1) Transfers. When the change of official station involves a short distance within the same general local or metropolitan area, the travel and transportation expenses and applicable allowances in connection with the employee's relocation of his residence shall be authorized only when the agency determines that the relocation was incident to the change of official station. Such determination shall take into consideration such factors as commuting time and distance between the employee's residence

B-189457

at the time of notification of transfer and his old and new posts of duty as well as the commuting time and distance between proposed new residence and the new post of duty. Ordinarily, a relocation of residence shall not be considered as incident to a change of official station unless the one-way commuting distance from the old residence to the new official station is at least 10 miles greater than from the old residence to the old official station. * * *

The commuting distance between Fort Detrick and WRAMC is greater than 10 miles, and we have been informally advised that employees who opt to relocate their residences incident to transfer between those locations are routinely authorized reimbursement of relocation expenses.

Inasmuch as the temporary quarters subsistence expenses and temporary storage costs which Mr. Ruh has already received are regarded as having been paid incident to the first transfer from Fort Detrick to WRAMC, the additional storage and temporary quarters expenses claimed by Mr. Ruh may be regarded as having been incurred as incident to the cancelled transfer to Gunter AFB. His orders directing transfer to Gunter AFB were amended twice before they were finally cancelled. In the interim Mr. Ruh was uncertain as to where he would ultimately be living, and unable to make definite arrangements to purchase a residence. In view of this, Mr. Ruh should be reimbursed for an additional 30 days temporary quarters and 60 days storage of household goods, as incident to the second transfer to Alabama which was later cancelled. He may not be reimbursed for additional temporary quarters or temporary storage expenses in excess of the 30- and 60-day periods, respectively.

As to Mr. Ruh's claim for reimbursement of the \$1,512.50 loan fee, FTR para. 2-6.2d provides:

"d. Miscellaneous expenses. The following expenses are reimbursable with respect to the sale and purchase of residences if they are customarily paid by the seller of a residence at the old official station or if they are customarily paid by the purchaser of a residence at the new official station, to the extent they do not exceed amounts customarily

B-189457

paid in the locality of the residence* * *. Notwithstanding the above, no fee, cost, charge, or expense is reimbursable which is determined to be a part of the finance charge under the Truth in Lending Act, Title I, Public Law 90-321, and Regulation Z issued pursuant thereto by the Board of Governors of the Federal Reserve System. (Emphasis added.)

Regulation Z, which is found at 12 C.F.R. § 226.4(a)(3) (1977) et seq., specifically includes loan fees of the type claimed by Mr. Ruh:

"(a) General rule. Except as otherwise provided in this section, the amount of the finance charge in connection with any transaction shall be determined as the sum of all charges, payable directly or indirectly by the customer, and imposed directly or indirectly by the creditor as an incident to or as a condition of the extension of credit, whether paid or payable by the customer, the seller, or any other person on behalf of the customer to the creditor or to a third party, including any of the following types of charges:

* * * * *

"(3) Loan fee, points, finder's fee, or similar charge."

There is no legal basis, therefore, on which to reimburse Mr. Ruh for such fee. B-183972, April 16, 1976.

Accordingly, the decision of our Claims Division denying Mr. Ruh's claim for reimbursement of the loan fee is sustained and that portion of the voucher may not be certified for payment.

Concerning the claimant's request as to what other courses of action are available to him, he is advised that decisions of the Comptroller General of the United States rendered on claims settled by the General Accounting Office are conclusive upon the executive branch of the Government. See 31 U.S.C. § 74. Independently of the jurisdiction of the General Accounting Office, the

B-189457

United States Court of Claims and the United States District Courts have jurisdiction to consider certain claims against the Government if suit is filed within 6 years after the claim first accrued. See 28 U.S.C. §§ 1346(a)(2), 1491, 2401, and 2501.

R. K. ...
Acting Comptroller General
of the United States