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PLN-11
Mr. Agazarian

DECISION



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

FILE: B-194196

DATE: November 14, 1979

MATTER OF: Rose Inouye - Transfer - Real Estate Expenses

DIGEST: Agency has asked whether an employee who prior to transfer indicated that she would not purchase a residence at her new official station may nevertheless be reimbursed for expenses incident to purchase of residence, in connection with that change of official duty station. When an agency determines that a transfer is in the interest of the Government certain allowances under 5 U.S.C. 5724 and 5724a, as implemented by the Federal Travel Regulations (FPMR 101-7) (May 1973), including that for real estate transactions, are mandatory. Agency may not deprive employee of reimbursement nor is employee's statement of intent binding.

The question to be decided in this case is whether an employee who has been issued a travel order authorizing travel and relocation expenses incident to a permanent change of official duty station may be denied her entitlement to reimbursement of real estate expenses incurred in connection with the purchase of a residence at her new duty station based upon statements prior to transfer that she would not purchase a residence. The transferred employee has a legal right to reimbursement for real estate expenses when the agency has determined that a transfer is in the interest of the Government and such right is not forfeited by employee's statements of intent.

By letter dated February 9, 1979, Mr. Robert A. Carlisle, an authorized certifying officer, of the Department of Health, Education, and Welfare, has asked whether Ms. Rose Inouye, an agency employee may be reimbursed the amount of \$311.79 for expenses she incurred incident to the purchase of a residence in Seattle, Washington, in connection with an intra-agency transfer from Roselle, Illinois, to Seattle, Washington. AGC00022

On January 25, 1977, a travel order which stated that the transfer was in the interest of the Government was issued authorizing Ms. Inouye reimbursement for travel and relocation expenses including that for real estate transactions. On

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January 27, 1978, she submitted a voucher for reimbursement in the amount of \$311.79 for real estate expenses incurred incident to the purchase of a residence in Seattle on January 13, 1978.

The agency states that the Travel Approving Official who signed the travel order, had discussed with Ms. Inouye, prior to the issuance of the order, whether she intended to purchase a residence in Seattle and that she had advised that she did not intend to purchase a residence. Ms. Inouye states that to the best of her recollection she did not express a lack of intent to purchase a residence. On HEW Form 106 Ms. Inouye provided the agency with transfer expenses information, prior to the issuance of her travel orders. She left blank the spaces for indicating the estimated costs of real estate transactions. On March 18 and April 19, 1977, she submitted vouchers for reimbursement of relocation expenses, other than real estate expenses. The agency states that the voucher included the statement "Final Claim on Previous Submittal."

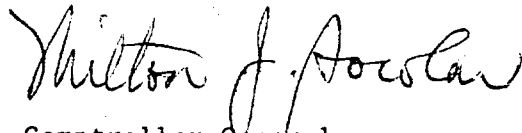
The agency asks whether the employee has effectively waived her entitlement to reimbursement for real estate expenses.

Reimbursement of travel and relocation expenses under 5 U.S.C. 5724 and 5724a, upon an employee's change of station, is not automatic but is conditioned upon a determination by the head of the agency concerned or his designees that the transfer is in the interest of the Government and is not primarily for the convenience or benefit of the employee. See para. 2-1.3 of the Federal Travel Regulations (FTR) (FPMR 101-7) (May 1973). Once the agency determines that a transfer is in the interest of the Government, certain allowances under 5 U.S.C. 5724 and 5724a as implemented by the FTR are mandatory and will be paid on a uniform basis. See 55 Comp. Gen. 613 (1976) and Paul J. Walski, B-190487, February 23, 1979. One such nondiscretionary allowance is that for reimbursement for the expenses of residence transactions as provided for in Chapter 2, Part 6 of the FTR.

The reimbursement for real estate expenses incurred incident to a transfer in the interest of the Government is considered a right pursuant to law and regulations. Thus, the fact that an employee does not intend to purchase a residence at the time of transfer does not preclude reimbursement for costs incurred in purchase if during the initial year after transfer the employee decides to purchase a residence and completes one transaction within the time limits prescribed by regulations.

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In accordance with the above, Ms. Inouye's claim for expenses incurred incident to the purchase of a residence in the amount of \$311.79 may be certified for payment, if otherwise proper.

A handwritten signature in cursive script, reading "Milton J. Fowler".

For The Comptroller General
of the United States