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DECISION



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

Request for Reimbursement of

FILE: B-196908

DATE: May 28, 1980

MATTER OF: Warren L. Shipp - Real Estate Expenses

DIGEST: Employee was transferred back to former duty station and was reimbursed expenses of selling former residence there even though he did not contract to sell former residence until after he had been notified of retransfer. Under Beryl C. Tividad, B-182572, October 9, 1975, he may retain amount reimbursed. However, Tividad is overruled prospectively. Hereafter, transferred employee is under same obligation to avoid unnecessary expenses as an employee whose transfer is cancelled and is entitled to only those real estate expenses which he has incurred prior to notice of retransfer and those which cannot be avoided.

We have been asked to determine whether an employee may be reimbursed real estate expenses in connection with the sale of his residence at his former duty station where he contracted to sell that residence after he had been notified that he was to be retransferred to that same duty station.

Mr. W. Smallets, Finance and Accounting Officer, National Security Agency (NSA), has asked us whether Mr. Warren L. Shipp is entitled to real estate sale expenses. Mr. Shipp, an NSA employee, was transferred from Fort Meade, Maryland, to Princeton, New Jersey, in August 1978, and was authorized relocation expenses, including real estate transaction expenses. He was notified April 25, 1979, that he was to be transferred back to Fort Meade and he was retransferred to his former duty station in August 1979. On May 9, 1979, Mr. Shipp entered into a contract to sell his former Maryland residence and on August 8, 1979, he submitted a claim for expenses associated with the sale of that residence. His claim for real estate expenses was paid in the amount of \$4,671.60. In the following week he submitted a claim for real estate expenses incurred in conjunction with the purchase of a residence in the Fort Meade area. The record does not indicate that Mr. Shipp's claim for real estate purchase expenses has been paid. Based on our holding in B-167141, July 23, 1969, Mr. Smallets asks whether Mr. Shipp should be required to reimburse the Government the \$4,671.60 paid as real estate sale expenses.

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Our decision in B-167141, July 23, 1969, involved an employee who entered into a contract for the sale of his residence at his old station after he had been notified that he was being retransferred to his old duty station at Fort Meade. In holding that the retransferred employee was not entitled to residence sale expenses, we held that " * * * after the advisement of his transfer back to Fort Meade * * * [the claimant] could no longer reasonably predicate the sale of his residence on the [earlier] change of duty station from Fort Meade * * * . "

The basis for that decision was repudiated in Beryl C. Tividad, B-182572, October 9, 1975, and in Ray L. Boman, B-173783.141, October 9, 1975. The holding in Beryl C. Tividad, involved an employee who was granted a 1-year extension of time to complete the sale of her home at her former duty station in New Orleans. One month later, in August 1973, she was retransferred from Temple, Texas, to her former duty station. Four months thereafter she contracted to sell her old residence in New Orleans and also contracted to purchase a home in the same area. Based on paragraph 2-6.1e of the Federal Travel Regulations (FTR) (FPMR 101-7) pertaining to the 1-year time limitation for real estate transactions and setting forth the standards for extending that 1-year period, the agency involved disallowed the residence sale expenses on the ground that the sale of the employee's New Orleans residence did not reasonably relate to her transfer from New Orleans to Temple.

In that case we pointed out that 5 U.S.C. § 5724a, which provides for the reimbursement of real estate expenses, requires a finding that a transfer is in the interest of the Government. Once that finding is made, the authorization of the benefit is restricted only by the terms of the implementing regulations. The regulations pertaining to real estate transaction expenses require a determination that a sale is reasonably related transfer only when an extension of the 1-year settlement date limitation is sought and granted and when transfers involving short distances are made. They do not authorize or permit an administrative determination in all cases that a particular real estate transaction relates to a transfer. Therefore, we held that the employee was entitled to the reimbursement claimed since the right to be reimbursed for transfer-related expenses arises once it is determined that a transfer is in the interest of the Government. In effect, the Tividad and Boman cases overruled B-167141 and

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permitted reimbursement of real estate purchase and sale expenses incurred at the duty station to which the employee is retransferred without regard to a determination that the residence transaction reasonably related to the transfer.

In a related line of cases, we have considered the relocation expenses entitlement of employees who were given transfer orders and whose transfers were subsequently canceled. If the employee's duty station has not changed as a result of the canceled transfer, the employee is treated for reimbursement purposes as if the transfer had been completed and employee had been retransferred to his former duty station. B. Lee Charlton, B-189953, November 23, 1977, and William E. Weir, B-189900, January 3, 1979. He may be reimbursed expenses incurred in good faith during the time the transfer orders were in effect, if the expenses claimed would have been payable if the transfer had been consummated.

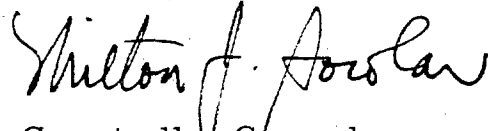
In the case of real estate expenses, we have recognized that an employee who entered into an enforceable contract to sell his residence at his duty station under transfer orders that were subsequently canceled may be reimbursed for real estate sale expenses even though settlement did not occur until after the transfer orders were canceled. B-177130, February 2, 1973. Where an employee's efforts to sell his residence have not progressed to the point of executing the sale, the extent to which real estate expenses are reimbursable may depend upon whether the employee has entered into a listing agreement that may be revoked without penalty. Wm. E. Jackson, Jr., B-181321, November 19, 1974. If, under applicable state law, the arrangement with the real estate agent binds him to pay a brokerage fee in the event he unilaterally cancels the agreement, the employee may be reimbursed for brokerage fees limited to the amount payable if the employee had withdrawn the property from sale. Neil Gorter, B-194448, December 11, 1979.

We are now of the view that the canceled transfer cases appropriately place the burden upon the employee to avoid unnecessary expenditures and ought to be extended to retransfer situations to the extent the employee has not substantially changed his position in reliance on the initial transfer. For this reason, the Tividad and Boman decisions are overruled. The new rule is that a employee who is transferred back to a

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former duty station is under the same obligation to avoid unnecessary expenses as an employee whose transfer is canceled. Therefore, once an employee is notified that he is being transferred back to his former duty station, the Government's obligation to reimburse real estate expenses is limited to the expenses already incurred and those which cannot be avoided.

Because adoption of the concept of avoidable expenses in the retransfer situation involves a changed construction of law, the Tividad and Boman cases are overruled prospectively only. See George W. Lay, 56 Comp. Gen. 561 (1977). Since, Mr. Shipp was properly reimbursed for his selling expenses under those decisions, he is not required to refund the reimbursement he received to the Government. He may also be reimbursed for his purchase expenses if that has not yet been done.



For the Comptroller General
of the United States