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**DECISION**



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

**FILE:** B-202386

**DATE:** September 8, 1981

**MATTER OF:** Bernard J. Silbert -  
[Claim for Reimbursement of] Real Estate Expenses

**DIGEST:** Employee of Department of Health and Human Services became legally obligated to sell former residence and purchase new residence in Virginia, prior to issuance of travel orders or formal notice of transfer. Employee may not be reimbursed real estate expenses claimed although travel orders subsequently issued authorized reimbursement for real estate transaction expense. For employee to be entitled to reimbursement, there would have to have been a clear administrative intention to transfer the employee and none existed when the employee became obligated to buy and sell the residences.

The question is whether the sale and purchase of an employee's residence was due to a transfer of official duty station so as to entitle the employee to reimbursement of real estate expenses. Since the case record evidences that the legal obligations to sell and buy the residences were incurred prior to the time the employee had reliable informal or official notice of a transfer, the employee may not be reimbursed the real estate expenses claimed.

The question was submitted for an advance decision by Mr. Walter W. Pleines, Acting Director, Division of Finance, Social Security Administration, Baltimore, Maryland. The employee involved is Mr. Bernard Silbert.

On February 5, 1979, Mr. Silbert, an Administrative Law Judge for the Office of Hearings and Appeals of the Social Security Administration in Fresno, California, was assigned as the Acting Deputy Chief Administrative Law Judge with the Office of Hearings and Appeals in Arlington, Virginia. This assignment was temporary in nature and did not entail a transfer. Mr. Silbert's temporary duty at Arlington ended on September 8, 1979.

Following that assignment, Mr. Silbert was given a temporary duty assignment with the Department of Labor

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in Washington, D.C. This assignment commenced on September 20, 1979, and terminated on May 6, 1980. Immediately thereafter Mr. Silbert was given a temporary duty assignment at the Office of Hearings and Appeals Council in Washington, D.C. He served in this position from May 19, 1980, to June 6, 1980.

In April of 1980 during his second temporary duty assignment, Mr. Silbert received notice that he would be permanently transferred to Washington, D.C., on June 15, 1980. This is evidenced by several documents in the case record including one signed by Mr. Silbert on April 23, 1980, in which he agreed to remain in Government service for 12 months following his transfer so as to receive relocation expenses, and his travel orders dated April 24, 1980.

Following his transfer, Mr. Silbert sought reimbursement for real estate expenses of \$12,746 incurred in the sale of his residence at Fresno, California, and of \$4,905.50 incurred in the purchase of a new residence at Arlington, Virginia. Although reimbursement for real estate sale and purchase expenses was authorized in his travel orders, Mr. Silbert's claim was denied because the expenses were incurred prior to his notification of transfer. Specifically, Mr. Silbert contracted to sell his Fresno residence on September 27, 1979, and concluded the transaction on December 14, 1979. He leased his new residence on January 9, 1979, under a lease which contained an option to purchase. He exercised his option on July 2, 1979. Due to legal complications, he was unable to complete this transaction until July 19, 1980.

While the real estate expenses were incurred on the basis of sale and purchase contracts entered into prior to official notice of the transfer, it is Mr. Silbert's contention that extenuating circumstances warrant reimbursement in his case. To support this contention, Mr. Silbert has obtained a letter from the former supervisor of the Administrative Law Judges, Robert L. Trachtenberg, and a memorandum from the current Chief Administrative Law Judge, Philip T. Brown.

Mr. Trachtenberg's letter indicates that he detailed Mr. Silbert to Arlington, Virginia, as the Acting Deputy Chief Administrative Law Judge at the beginning of February

1979. Mr. Trachtenberg further indicates that he informed Mr. Silbert that eventually he would be permanently transferred to Arlington as the Deputy Chief Administrative Law Judge. Mr. Trachtenberg left the Office of Hearings and Appeals in May 1979.

Mr. Brown's memorandum indicates that he was involved in approving Mr. Silbert's detail from September 20, 1979, through May 16, 1980, with the Department of Labor in Washington, D.C. Additionally, Mr. Brown states that in October of 1979, he orally advised Mr. Silbert of a pending vacancy in Washington, D.C., for which Mr. Silbert would be given first priority because of personal hardship circumstances. Mr. Brown states that tentative approval of Mr. Silbert's transfer was made prior to December 1979.

An employee is not necessarily precluded from being reimbursed for expenses incurred in the sale or purchase of a residence before a definite notice of transfer. Muriel V. Landry, B-198028, November 3, 1980, and cases cited therein. For example, we have held in prior decisions that reimbursement of expenses incurred prior to the issuance of travel orders may be allowed if the subsequently issued travel orders authorize relocation expenses on the basis of a previously existing administrative intent to transfer the employee evident at the time the expenses were incurred. Joan E. Marci, B-188301, August 16, 1977. What would constitute a clear intention to transfer an employee is dependent on the specific circumstances of each case, Philip H. Postel, B-187107, October 7, 1976, and 53 Comp. Gen. 836 (1974).

Thus, our inquiry is whether such an administrative intent was clearly evident prior to the time Mr. Silbert incurred the legal obligations to sell and buy the residences. As the facts indicate, the relevant dates are September 27, 1979, for the sale and July 2, 1979, for the purchase.

We do not find sufficient evidence in the record to establish that there existed the requisite administrative intent to transfer Mr. Silbert at the time he became legally obligated to sell his old residence and buy his new residence. We recognize that Mr. Trachtenberg did indicate to Mr. Silbert that he would be transferred to

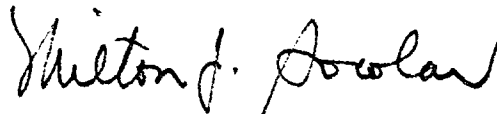
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Arlington, Virginia, as the Deputy Chief Administrative Law Judge. However, Mr. Trachtenberg left his position in May 1979 and at that time Mr. Silbert had neither become obligated for nor incurred any real estate expenses relative to either the future sale or purchase. Since Mr. Silbert's transfer was a matter within Mr. Trachtenberg's discretion, any expectation he may have had in that regard should have been nullified or significantly diminished when Mr. Trachtenberg left his position.

As to Mr. Brown's indication to Mr. Silbert that he would be transferred, this took place sometime in October or November 1979, which was after Mr. Silbert had entered into the contract to sell his Fresno residence and exercised the option to purchase his new residence in Arlington.

In reaching this conclusion, we are mindful that a reliable verbal notification of tentative selection to a position may be adequate to entitle an employee to real estate expenses incurred in reliance on that notification. See Gerald S. Beasley, B-196208, February 28, 1980, and cases cited therein. In Mr. Silbert's case we are unable to find that he had received such reliable verbal notification of transfer at the time he became obligated to sell his former residence and purchase his new one.

Accordingly, Mr. Silbert has no entitlement to the claimed real estate expenses for the sale of his old residence and the purchase of his new residence.



Acting Comptroller General  
of the United States