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DECISION



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

FILE: B-206239

DATE: April 26, 1982

MATTER OF: Alan L. Olson -- Claim for relocation expenses incurred prior to notice of transfer

DIGEST: Employee sold residence at old duty station in anticipation of transfer. Settlement occurred prior to employee's selection for position under competitive procedures and agency's formal notice of transfer. In the absence of previously existing administrative intent to transfer the employee, these real estate expenses may not be reimbursed.

The issue in this decision is the entitlement of an employee to reimbursement for the expenses of sale of a residence where the residence was sold in anticipation of a transfer to a new duty station. We hold that the employee may not be reimbursed these expenses in the absence of an administrative intention to transfer the employee clearly evident at the time the expenses were incurred.

This decision is in response to an appeal by Mr. Alan L. Olson from our Claims Group settlement denying his claim for certain real estate expenses (Z-2825842, September 28, 1981).

Mr. Olson, who was employed by the National Weather Service in Huntsville, Alabama, sought a transfer to the west coast in order to be closer to members of his family. Mr. Olson says that he contacted the Western Region Headquarters of the National Weather Service by telephone in April 1979, and, based on his experience and other factors, he was advised by agency officials that it was likely he would be selected for a position in the Western Region within 6 months to 1 year.

Mr. Olson placed his residence in Alabama on the market, and it sold quickly with settlement occurring on June 22, 1979. Shortly thereafter, Mr. Olson applied for a position under a vacancy announcement issued July 23, 1979, he was notified of his selection by letter dated August 23, 1979, and was issued travel orders on August 29, 1979, for travel to his new duty station in Medford, Oregon.

The agency has denied reimbursement of real estate expenses incurred in the sale of Mr. Olson's residence for \$4,510.50 on the basis of paragraph 2-6.1d of the Federal Travel Regulations (FTR) (FPMR 101-7, May 1973), since the residence for which expenses are claimed was not his residence at the time he was first definitely informed of his transfer. The agency denies that it definitely informed Mr. Olson of the transfer prior to settlement on his old residence since, under merit promotion procedures, selection cannot be made until the qualifications of all candidates are reviewed.

Our Claims Group settlement denied Mr. Olson's claim on the basis that he sold his residence before he had sufficient reason to believe he would be transferred. On appeal, Mr. Olson argues that he was in frequent contact with Western Region officials but was never advised that the timing of the sale of his residence would affect his entitlement to reimbursement. Mr. Olson argues that the relatively short time (2 months) between the sale of his residence and formal notification of his transfer indicates that "everyone was working for a transfer very diligently." Finally, Mr. Olson contends that he was definitely notified of an impending transfer and that he was acting within the scope of the regulations.

Under the authority of 5 U.S.C. § 5724a(a)(4) (1976), and the implementing regulations (Federal Travel Regulations), an employee who is transferred may be reimbursed for the expenses of sale of a residence at the old duty station and purchase of a residence at the new duty station. The regulation cited by the agency, FTR paragraph 2-6.1d, imposes an occupancy requirement that the dwelling for which selling expenses are claimed must be the employee's residence at the time he is first definitely informed by competent authority of his transfer to the new official station.

Our decisions have held that where the employee incurs relocation expenses prior to and in anticipation of a transfer of his official duty station, these expenses may be reimbursed if the travel order subsequently issued includes authorization for the expenses on the basis of previously existing administrative intention, clearly evident at the time the expenses were incurred.

by the employee, to transfer the employee. Joseph L. White, 58 Comp. Gen. 208 (1979); 53 Comp. Gen. 836 (1974). What constitutes a clear intention to transfer an employee depends on the circumstances in each case. Joan E. Marci, B-188301, August 16, 1977.

There is no evidence in the record before us of an existing administrative intention to transfer Mr. Olson at the time settlement occurred at his old residence. In fact, we note that Mr. Olson only filed a formal request for transfer on May 31, 1979, just 3 weeks prior to his settlement date. While it appears that agency officials were optimistic about Mr. Olson's prospects for a transfer, no definite commitments were made by agency officials until Mr. Olson was selected for a position in Medford, Oregon, through competitive procedures.

The facts in this case stand in contrast to prior decisions where we have permitted reimbursement for relocation expenses incurred prior to formal notice of transfer. For example, where the employee has been definitely notified of his transfer, although it may be contingent upon formal approval of his appointment of creation of a new position, we have found "previously existing administrative intention" to transfer. John J. Fischer, B-188366, January 6, 1978; and Stanley N. Hirsch, B-187045, August 3, 1977. Similarly, where the employee was notified that his position was surplus or that all essential functions of an installation would be relocated, we have found a clear intention to transfer an employee. See Orville H. Myers, 57 Comp. Gen. 447 (1978), and decisions cited.

The agency has rejected Mr. Olson's contention that he was definitely advised of his transfer in June 1979, since that would be in violation of competitive selection procedures which Mr. Olson understood would be applicable to his request for transfer. There is no evidence that the agency ever advised Mr. Olson to proceed with selling his old residence, but it appears that Mr. Olson relied upon the agency's silence.

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Accordingly, since we find no evidence of existing administrative intention to transfer Mr. Olson at the time of settlement on his old residence, we must sustain our Claims Group denial of his claim for reimbursement of these real estate expenses.

Shilton J. Doctor
for Comptroller General
of the United States