

DECISION



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

FILE: B-220784

DATE: March 11, 1986

MATTER OF: Raymond J. Sexton

DIGEST:

Employee requests reimbursement for six \$10 surcharges incurred incident to month-to-month leases he entered into after learning of his pending relocation. Although the surcharges may not be reimbursed as real estate transaction expenses, they may be paid as miscellaneous expenses, subject to the general limitations established for miscellaneous expense reimbursements. B-188604, February 14, 1978; B-188650, October 18, 1977, modified.

By letter dated August 14, 1985, an authorized certifying officer with the Department of the Army requested an advance decision as to whether Mr. Raymond J. Sexton may be reimbursed for six \$10 surcharges incurred incident to month-to-month leases he entered into after being notified of his pending transfer.^{1/} We conclude that Mr. Sexton may be reimbursed for this expense under provisions concerning miscellaneous expenses in Chapter 9, Volume 2 of the Joint Travel Regulations and the substantially identical provisions in Chapter 2, Part 3 of the Federal Travel Regulations, subject to the general conditions and limitations on reimbursements under these provisions.

FACTS

The record indicates that Mr. Sexton, a civilian employee of the United States Army Intelligence and Security Command (USAINSCOM), Department of the Army, made a permanent-change-of-station move from Fort Bragg, North Carolina, to Arlington, Virginia, on January 13, 1985. His

^{1/} The request was forwarded through the Per Diem, Travel and Transportation Allowance Committee, by letter dated September 26, 1985, and was assigned PDTATAC Control No. 85-32.

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12-month apartment lease expired on July 31, 1984, roughly 6 months prior to his move. At that time, USAINSCOM had notified Mr. Sexton that his activity would be relocated to Arlington, Virginia. In view of his pending transfer he chose not to enter into a new 12-month lease, opting instead to lease his apartment on a month-to-month basis. He states that he was charged a \$10 per month surcharge over his previous rental rate specifically because the lease was on a month-to-month basis. He incurred this charge for 6 months (August 1984 through January 1985) while waiting to be transferred.

In March 1985 Mr. Sexton submitted a voucher to the appropriate Army Finance and Accounting Office. His voucher included a request for reimbursement of the \$60 surcharge. The Army disallowed this claim due to the lack of provisions specifically authorizing reimbursement, but requested an advance decision from our Office on the following questions:

1. Is this type of surcharge reimbursable?

2. If this surcharge is reimbursable, is the claimant entitled only to the amount of surcharge that he paid after his permanent-change-of-station orders were dated (November 16, 1984), or is he entitled to the full amount of the surcharge incurred as of the time he extended his lease (July 1984)?

For the reasons discussed hereafter, the surcharge is reimbursable as a miscellaneous expense to the extent that the general requirements for reimbursement of miscellaneous expenses can be satisfied. The full amount of the surcharge going back to July 1984 is subject to reimbursement, if otherwise allowable, since there was a clear administrative intent to transfer Mr. Sexton at the time of his first month-to-month lease and all of the surcharge payments were incurred in anticipation of this transfer. See, e.g., 58 Comp. Gen. 208 (1979) and decisions cited therein.

DISCUSSION

Authority for reimbursement of relocation expenses is found in 5 U.S.C. § 5724a (1982 & Supp. I, 1983). The statutory provisions relating to residence transaction

expenses have been implemented by Chapter 2, Part 6 of the Federal Travel Regulations (FTR), incorp. by ref., 41 C.F.R. § 101-7.003 (1985), and, for civilian employees of the Department of Defense, Volume 2, Chapter 14 of the Joint Travel Regulations (JTR). Paragraph C14003 of 2 JTR (Change No. 232, February 1, 1985), entitled "Allowable Expenses for Settlement of Unexpired Lease," provides that:

"Expenses incurred in settling an unexpired lease (including month-to-month rental) on residence quarters occupied by the employee at the old duty station * * * are reimbursable * * *"

On the basis of this authority, Mr. Sexton suggests that the Government would have been liable for the cost of the unexpired lease remaining at the time of his move had he not attempted to minimize that liability by leasing his apartment on a month-to-month basis after he was informed of the pending relocation.

Our Office has recognized that the costs incurred in settling an unexpired lease when making a permanent-change-of-station move are reimbursable in many circumstances. However, we have held that an employee must take reasonable efforts to minimize the Government's potential liability for such expenses. In John M. Taylor, 60 Comp. Gen. 528 (1981), we considered the situation where an employee entered into a 1-year lease when he was on notice that he would be transferred in 4 to 6 months. We denied reimbursement for lease termination expenses on the basis that the employee failed to make his best efforts to mitigate damages because the lease termination costs should have been avoided in the first instance.

It would appear that Mr. Sexton's conduct was consistent with our ruling in Taylor in that he avoided the potential expense of terminating a long-term lease by leasing his apartment on a month-to-month basis. Further, his action appears reasonable as an effort to mitigate the cost impact of his move since the additional expense incurred totaled only \$60. Nevertheless, we cannot approve reimbursement relying on the authority of 2 JTR para. C14003 or the similar provisions of FTR, para. 2-6.2h. Those regulations only authorize reimbursement of expenses which are incurred in settling an unexpired lease. Since Mr. Sexton's earlier

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lease expired on July 31, 1984, and he subsequently rented his apartment on a month-to-month basis, there was no settlement of an unexpired lease at the time of his move.

We considered a similar situation in Richard Bockover, B-188650, October 18, 1977. In that case the employee, upon learning of a pending transfer, entered into a 3-month rather than a 12-month lease of his residence. The employee paid a \$25 per month premium due to the short term of the lease. We denied the claim, stating:

"* * * Mr. Bockover has, in essence, incurred an additional expense of \$75 (\$25 premium for 3 months) in an effort to reduce the Government's possible liability for lease termination expenses. See FTR para. 2-6.2h. Unfortunately, there is no authority to reimburse Mr. Bockover for this additional expense."

Similarly, in Kenton L. Culbertson, B-188604, February 14, 1978, we held that a \$75 fee incident to a short-term lease extension, as opposed to a penalty for early termination of a lease, did not qualify for reimbursement under FTR, para. 2-6.2h.

It appears that the combined effect of the regulations and our decisions discussed above places an employee with knowledge of a pending transfer in a difficult situation. If, after being notified of a pending transfer, the employee enters into a long-term lease, the expenses incurred for lease termination at the time of the move will be denied, as in Taylor, for failure to avoid the cost. On the other hand, if the employee avoids the termination expenses of a long-term lease and leases on a month-to-month basis while awaiting the move, the additional expense incurred incident to those leases will be denied, as in Bockover and Culbertson, on the basis that the regulations concerning settlement of unexpired leases are inapplicable.

A solution to this problem is provided by the authority of 2 JTR, Chapter 9 and the similar provisions in Chapter 2, Part 3 of the FTR. Under the authority of these regulations, employees may be reimbursed for certain miscellaneous expenses incurred incident to relocation. Paragraph C9000 of the JTR provides that:

"The miscellaneous expense allowance is for the purpose of defraying various contingent costs associated with relocation of a residence in connection with an authorized or approved permanent change of station. * * *"

Although paragraph C9000 goes on to list several examples of reimbursable costs--none of which specifically includes the type of expense considered here--it expressly states that the costs covered by this authority are not limited to those listed. Conversely, paragraph C9001 lists expenses which are expressly excluded from reimbursement under Chapter 9. This list also does not refer to the type of surcharge paid by Mr. Sexton.

Our Office has previously permitted reimbursement of certain miscellaneous expenses under the authority of 2 JTR, Chapter 9 (and the similar provisions of FTR, para. 2-3) in circumstances where reimbursement was sought but denied as being beyond the scope of the regulations in 2 JTR, Chapter 14 (and FTR, para. 2-6) concerning unexpired leases. In Nathan F. Rodman, 64 Comp. Gen. 323 (1985), we considered whether an employee could be reimbursed money paid on a lease for an exclusive option to purchase during his lease period which the employee forfeited when he was transferred to a new duty station. We held that reimbursement was not authorized pursuant to the statute and regulations dealing with the sale of a residence and settlement of an unexpired lease. Nonetheless, we allowed reimbursement of the forfeited deposit as a miscellaneous expense under the provisions of FTR, para. 2-3. See also, Ronald N. Lacey, B-182127, June 8, 1976.

Our prior decisions in Bockover and Culbertson, discussed above, correctly held that premiums associated with a month-to-month lease pending a relocation could not be reimbursed as lease termination expenses, but these decisions did not consider the possibility of reimbursement as a miscellaneous expense. We now conclude that this particular type of expense is subject to miscellaneous expense reimbursement under the principle we followed in Rodman and Lacey.

The regulations concerning miscellaneous expenses were intended to provide reimbursement for the many minor costs associated with leaving one residence and reestablishing a

home in a new location. It is clear in the present case that Mr. Sexton was on notice of his pending transfer at the time he incurred the month-to-month lease premiums, that he would not have incurred the additional expense of the premiums but for the transfer, and that the month-to-month lease arrangement represented a reasonable means of mitigating expenses incident to the transfer. We believe that surcharges or premiums incurred incident to month-to-month leases while awaiting a transfer may be considered miscellaneous expenses for purposes of 2 JTR, Chapter 9 and FTR, Chapter 2, Part 3 under such circumstances.

Although we hold that this type of expense is reimbursable under 2 JTR, Chapter 9 and the similar provisions of FTR, Chapter 2, Part 3, we note that these regulations prescribe certain conditions and limits on the amounts payable. Subparagraph (1) of 2 JTR para. C9003 provides for reimbursement up to specified ceilings, depending on the pay rate of the employee, where the costs are not supported by receipts or other evidence documenting the expenditures. Subparagraph (2) provides for reimbursement of amounts in excess of those permitted in subparagraph (1) if the claim is supported by paid bills or other acceptable evidence justifying the entire amount claimed.

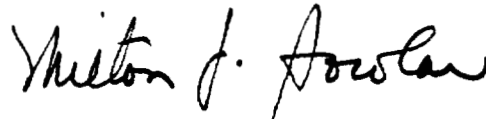
In the case presented by Mr. Sexton, the record indicates that he has already been reimbursed the maximum amount payable under subparagraph (1) of 2 JTR para. C9003. Thus, even though the \$60 surcharge is considered to be a miscellaneous expense, that amount may not be paid in addition to the amount already received unless Mr. Sexton submits documentation of all the miscellaneous expenses he incurred incident to his move, as required by subparagraph (2). If the total documented expenses--including the \$60 surcharge--exceed the amount he was paid under authority of subparagraph (1), such expenses would be reimbursable under subparagraph (2) up to the separate ceiling established in that subparagraph.

In summary, we construe the authority for reimbursement of miscellaneous expenses in 2 JTR, Chapter 9 and FTR, Chapter 2, Part 3 to encompass surcharges or premiums incurred incident to month-to-month leases of an employee's residence after notice of a pending transfer where such expenses represent a reasonable effort to mitigate damages in connection with the transfer. To the extent our prior

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rulings in Richard Bockover, B-188650, October 18, 1977, and Kenton L. Culbertson, B-188604, February 14, 1978, imply otherwise, they are modified.

Accordingly, provided Mr. Sexton submits documentation for miscellaneous expenses he incurred which shows that they exceed the amount he was reimbursed under 2 JTR C9003, subparagraph (1), he may be reimbursed under the authority of 2 JTR C9003, subparagraph (2), subject to the limits established therein.

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

Acting Comptroller General
of the United States