



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: R. Bruce Michael
File: B-221518
Date: September 26, 1986

DIGEST

An employee claimed reimbursement for the expenses of the sale of a residence in Ann Arbor, Michigan, incident to a permanent change of station. However, at the time of the relocation, the employee was living in an apartment in Ypsilanti, Michigan, from which he was commuting to work, and the residence in Ann Arbor, Michigan, was rented out. The latter residence was not occupied by the employee at the time he was first notified of the transfer, nor was it the residence from which he commuted to work on a daily basis, as the Federal Travel Regulations require, and thus his claim is denied.

DECISION

This decision is in response to a request for an advance decision by Mr. Conrad R. Hoffman, Director, Office of Budget and Finance, Veterans Administration (VA), Washington, D.C., concerning the entitlement of Mr. R. Bruce Michael to reimbursement for real estate expenses incident to a permanent change of station (PCS). For the following reasons, we conclude that Mr. Michael may not be reimbursed.

Mr. R. Bruce Michael, a VA employee was authorized expenses for a PCS from the Environmental Protection Agency in Ann Arbor, Michigan, to the VA Medical Center in Iowa City, Iowa. At the time of the relocation Mr. Michael listed his residence as being an apartment in Ypsilanti, Michigan. He subsequently presented a voucher claiming reimbursement in the amount of \$3,935 for the sale of a residence in Ann Arbor, Michigan. The VA disallowed this claim on the grounds that the residence in Ann Arbor was not the residence occupied by Mr. Michael at the time he was notified of the transfer, nor was it the residence from which he commuted to work on a daily basis.

Mr. Michael does not dispute the above facts, but argues that his Ann Arbor residence should be considered his residence and that he should receive reimbursement for his real estate expenses for the following reasons. Mr. Michael asserts that, at the time of his transfer, his wife and he were temporarily living in an apartment on a lake during the

summer in Ypsilanti, Michigan. Also, he was commuting to work from this apartment. He had rented out his residence in Ann Arbor, Michigan, mainly to cover expenses and not for investment purposes. After he first applied for the transfer, and it became clear that he might receive it, but prior to any official notice, he decided to continue living in the apartment to see if he would get the transfer before moving back into the residence in Ann Arbor, Michigan. He further argues that he clearly could have moved back into the Ann Arbor residence prior to receiving the transfer notice, and he originally intended to move back into it prior to the date of receiving the transfer notice. Mr. Michael informed us that both the Ypsilanti apartment and the Ann Arbor residence were on month-to-month leases. He also informed us that most of his household goods were located in the apartment.

The authority to reimburse an employee for real estate expenses incident to a PCS is contained in 5 U.S.C. § 5724a(a)(4) (1982). The relevant regulations implementing this statute are found in paragraphs 2-1.4i and 2-6.1d of the Federal Travel Regulations (FTR) (Supp. 4, Aug. 23, 1982), incorp. by ref. 41 C.F.R. § 101-7.003 (1985), which, respectively and in relevant part, provide:

"i. Official station or post of duty.

The building or other place where the officer or employee regularly reports for duty. * * * With respect to entitlement under these regulations relating to the residence and the household goods and personal effects of an employee, official station or post of duty also means the residence or other quarters from which the employee regularly commutes to and from work."

* * * * *

"2-6.1 Conditions and requirements under which allowances are payable. To the extent allowable under this provision, the Government shall reimburse an employee for * * * [certain residence transaction expenses] * * * Provided, That:

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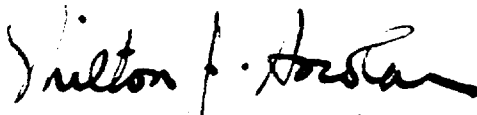
"d. Occupancy requirements. The dwelling for which reimbursement of selling expenses is claimed was the employee's residence at the time he/she was first definitely informed

by competent authority of his/her transfer to the new official station."

When read in tandem, FTR para. 2-1.4i and 2-6.1d generally establish the requirement that in order for an employee to be reimbursed the expenses of the sale of residence at his old station, he must live there at the time of transfer notice and that it is the place where he regularly commutes to and from work. John E. Wright, B-216197, February 19, 1985, 64 Comp. Gen. 268, 272. The Wright decision itself notes that our case law in this area has recognized certain exceptions to the "actual residence" rule which typically involve situations where the employee and his family are not residing in their residence at the old duty station because of Government training or travel requirements at the time a PCS move occurs. Id. at 272. However, the situation in the instant case does not fall within any of these recognized exceptions.

We recognize that an employee may be temporarily occupying a vacation property at the time of definite notice of transfer and that this would not necessarily defeat the employee's rights to reimbursement for the sale of his or her permanent residence. However, in the case before us, Mr. Michael was not only regularly commuting to work from the apartment in Ypsilanti, but also had most of his household goods there. Thus, in the particular circumstances of this case, we believe that his residence in Ann Arbor can neither be considered as the residence occupied by Mr. Michael at the time of the transfer, nor as the residence from which he commuted to work on a daily basis.

Accordingly, Mr. Michael's claim for reimbursement of real estate expenses is denied.

for 
Comptroller General
of the United States