



The Comptroller General
of the United States

Washington, D.C. 20548

Ratzenberger

Decision

Matter of: James K. Payne - Attorney Fees - Relocation
File: B-231826
Date: June 2, 1989

DIGEST

1. An employee became legally obligated to buy a home at his old duty station and subsequently learned he was being considered for a new position in another state. The legal fees incurred in renegotiating the sales contract to include a clause allowing the employee to terminate the contract without loss of the deposit if the employee transferred may not be reimbursed as a real estate expense under 5 U.S.C. § 5724a(a)(4) since he did not acquire an interest in the property. However, the legal fees may be reimbursed as a miscellaneous expense under 5 U.S.C. § 5724a(b), subject to the agency's determination that an administrative intent to offer him the new position had been expressed before the expenses were incurred.
2. An employee's legal expenses incurred in connection with the preparation and settlement of a claim against his agency for relocation expenses may not be reimbursed since no express statutory authority allows such payment.

DECISION

This is in response to a request from the Finance and Accounting Officer for the U.S. Army Corps of Engineers, Baltimore District, for an advance decision concerning a claim by Mr. James K. Payne for reimbursement of \$384 in attorney fees incurred in the renegotiation of a contract to purchase a home. Mr. Payne also seeks attorney fees of \$120 incurred in the preparation of this claim.

For the reasons stated below, we find that Mr. Payne is not entitled to reimbursement of the attorney fees of \$384 as a real estate expense. However, he may be eligible for reimbursement of this amount as a miscellaneous expense of relocation, subject to an agency determination that there was an administrative intent to offer Mr. Payne a new position at the time the expenses were incurred. Mr. Payne

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is not entitled to reimbursement of the additional \$120 attorney fees.

BACKGROUND

Mr. Payne was employed at the Naval Air Engineering Center in Lakehurst, New Jersey, in July 1987. On July 25, 1987, Mr. Payne submitted an offer to purchase a home in New Jersey, which the seller accepted on July 27. Two days later, Mr. Payne was informed that he was being considered for a position as a Civil Engineer with the Army Corps of Engineers in Pennsylvania. Mr. Payne immediately engaged an attorney to renegotiate the purchase contract to include an option to terminate in the event he transferred to Pennsylvania. The amended contract was executed on August 5, 1987, and gave Mr. Payne the right to terminate the contract on or before August 20, 1987. On August 17, 1987, Mr. Payne was formally notified of his selection for the position, and he promptly terminated the contract. He received travel orders on September 11, 1987, authorizing his travel from New Jersey to Pennsylvania.

Mr. Payne contends that he should be reimbursed for his legal expenses since they were incurred as a direct result of his official change of duty station to Pennsylvania. He asserts that the action he took to renegotiate the contract actually minimized the ultimate costs to the government, since if he had not renegotiated he would have been forced to forfeit the deposit or resell the property. Mr. Payne also claims reimbursement for the legal expenses incurred in preparing his claim for settlement.

OPINION

The statutory authority for reimbursing an employee for real estate expenses incurred incident to a transfer is 5 U.S.C. § 5724a(a)(4) (1982 and Supp. IV 1986). Paragraph 2-6.1c of the Federal Travel Regulations (FTR) (Supp. 1, Nov. 1, 1981), incorp. by ref., 41 C.F.R. § 101-7.003 (1987), implementing that statute, provides that reimbursement of the expenses of selling the old residence may be made if title to the residence is held by the employee prior to the date the employee was first notified of the transfer to the new duty station. See also David Riddering, B-223004, Nov. 3, 1986. Since Mr. Payne never acquired title to the property, his claim for legal costs associated with renegotiating the contract may not be paid as a real estate expense.

If Mr. Payne had not incurred the legal fees involved in renegotiating the contract, he would likely have forfeited

the \$8,250 deposit. This amount also would not have been reimbursed as a real estate expense, since Mr. Payne had obtained no legal interest in the property. See David D. Lombardo, B-190764, Apr. 14, 1978. However, we have authorized reimbursement of a deposit made on the purchase of a residence which was later forfeited upon transfer under the authority provided in 5 U.S.C. § 5724a(b) and the implementing regulations in FTR, para. 2-3.1 et seq. for the payment of miscellaneous expenses. See 55 Comp. Gen. 628 (1976); Ralph A. Neeper, B-195920, June 30, 1980. Therefore, had Mr. Payne forfeited his deposit he would have been eligible for reimbursement of the deposit as an item of miscellaneous expense.

In this case, Mr. Payne avoided such forfeiture by negotiating for the inclusion of an option clause allowing him to terminate the contract. In Steven W. Hoffman, B-193280, May 8, 1979, we considered a similar claim for legal expenses. In Hoffman, the employee, without knowledge of an upcoming transfer, entered into a contract for the construction of a home at his old duty station. Upon receiving notice of his transfer, he engaged the services of an attorney to aid in the rescission of his construction contract and claimed the legal fees. While recognizing that reimbursement could not be made on the basis that the legal fees were real estate expenses since title had not passed to the employee prior to the notification, we permitted reimbursement as a miscellaneous expense pursuant to FTR, para. 2-3.1. We found that there was no meaningful difference between the forfeiture of a deposit in order to be released from a purchase contract and the incurring of expenses in order to accomplish the same objective where the expenses seem reasonable.

Thus, Mr. Payne may be eligible for reimbursement for the legal fees incurred in connection with the renegotiation of the sales contract under FTR, para. 2-3.1. However, reimbursement is contingent upon a finding that the expenses, which in this case were incurred prior to formal notification of his selection for the new position, were based upon a previously existing administrative intent to offer the new position to Mr. Payne. See FTR, para. 2-3.2a; Bernard J. Silbert, B-202386, Sept. 8, 1981; Joan E. Marci, B-188301, Aug. 16, 1977. What constitutes a clear intention to transfer an employee is dependent on the specific circumstances of each case. Philip H. Postel, B-187107, Oct. 7, 1976.

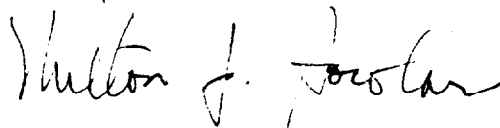
We have held in past decisions that verbal notification of a tentative selection for a position may constitute a clear intention to transfer an employee. Gerald S. Beasley,

B-196208, Feb. 28, 1980, and cases cited. In this regard, we have found that the requisite administrative intention existed where agency personnel orally advised the employee that he had been selected for a position but that his transfer was contingent on the occurrence of a particular event. James H. Hogan, B-191912, Apr. 5, 1979; John J. Fischer, B-188366, Jan. 6, 1978.

It appears from the record that such administrative intent was present in this case and that it was reasonable for Mr. Payne to have incurred the legal expenses in anticipation of an offer. If the agency determines that such an intent was present, Mr. Payne may be reimbursed for his legal expenses. The amount he is eligible to receive may not exceed the maximum reimbursement for miscellaneous expenses allowable under FTR, para. 2-3.3.

In regard to the attorney fees incurred in the preparation of this claim, we have held that such expenses are not reimbursable. Absent express statutory authority, reimbursement of attorney fees in connection with the settlement of claims may not be allowed. Leland M. Wilson, B-205373, Apr. 24, 1984. See also Julian C. Patterson, 61 Comp. Gen. 411 (1982); Norman E. Guidaboni, 57 Comp. Gen. 444 (1978).

Accordingly, subject to the agency's determination concerning administrative intent to transfer, Mr. Payne may be entitled to reimbursement as a miscellaneous expense for the attorney fees incurred in the contract renegotiation, but not for the legal expenses incurred in the preparation of this claim.



Acting Comptroller General
of the United States