



**The Comptroller General  
of the United States**

Washington, D.C. 20548

## **Decision**

**Matter of:** Frederick J. Donnelly

**File:** B-237607

**Date:** May 21, 1990

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### **DIGEST**

An employee who transferred from England to a position in the United States was issued travel orders authorizing expenses for the sale of his residence in England. The employee is not entitled to such expenses because his international transfer was not of the type for which real estate expenses are authorized under 5 U.S.C. § 5724a(a)(4) (1988), and in any event the expenses allowed under that statute are limited to those incurred within the United States. In addition, we decline to submit the claim to Congress for consideration as a meritorious claim under 31 U.S.C. § 3702(d).

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### **DECISION**

This decision responds to a request by the Federal Emergency Management Agency concerning Mr. Frederick J. Donnelly's claim for real estate expenses incurred in England pursuant to a transfer to the United States.<sup>1/</sup> For the reasons stated below, we conclude that Mr. Donnelly may not be paid real estate expenses and we decline to submit the matter to Congress as a meritorious claim pursuant to 31 U.S.C. § 3702(d).

### **BACKGROUND**

In April 1983, Mr. Donnelly received a new federal appointment to a position with the Federal Emergency Management Agency (FEMA) in the United States. He worked at FEMA until March 1985, when he left the government to begin a brief period of private sector employment in Germany. In

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<sup>1/</sup> After FEMA submitted its request, we received further correspondence on the matter from Representative Curt Weldon and Representative Dick Schulze.

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November 1985, Mr. Donnelly was reinstated to federal service as a civilian employee of the United States Air Force in Mildenhall, England. In April 1988, he returned to FEMA, transferring to a position in Philadelphia, Pennsylvania.

In connection with Mr. Donnelly's travel from England to Philadelphia, FEMA issued him travel orders which erroneously authorized residence sale expenses. Mr. Donnelly claimed expenses of \$6,681.50 for selling his house in England.

After Mr. Donnelly relocated and submitted a claim for residence sale expenses, FEMA discovered that Mr. Donnelly was not entitled to such expenses. The agency submitted Mr. Donnelly's claim to this Office for consideration under the Meritorious Claims Act, 31 U.S.C. § 3702(d), recommending that we refer it to the Congress because Mr. Donnelly incurred costs in reliance on his travel orders.

#### ANALYSIS

Under the statute authorizing real estate expenses for transferred employees, 5 U.S.C. § 5724a(a)(4) (1988), Mr. Donnelly is not entitled to reimbursement for the expenses of selling his home in England. Prior to its amendment in 1987, 5 U.S.C. § 5724a(a)(4) authorized real estate expenses only for employees transferring within the United States and designated territories. In 1987, the law was amended to authorize real estate expenses in connection with an international transfer only under one set of circumstances: the employee must be transferred from a post of duty in the United States to an overseas station and then be transferred back to a different location in the United States. An employee who transfers under these circumstances may be reimbursed only for the expenses of selling his original residence in the United States and buying a new residence in the United States after returning from overseas. See 5 U.S.C. § 5724a(a)(4)(A), as amended by Public Law No. 100-202, § 101(m) [Title VI, § 628(a)(1)], 101 Stat. 1329-430, 431 (1987).

Mr. Donnelly's transfer does not fall within the circumstances defined in 5 U.S.C. § 5724a(a)(4)(A) because he had been working for a private company in Europe at the time he accepted his position with the Air Force. Moreover, Mr. Donnelly would not in any event have been eligible for expenses of selling his house abroad since the statute limits reimbursable expenses to those incurred in the United States.

With regard to the erroneous travel orders issued to Mr. Donnelly, it is a well-settled rule of law that the government cannot be bound beyond the actual authority conferred upon its agents by statute or by regulations. This is so even though the agent or employee may not have been aware of the limitations on his authority. See M. Reza Fassihi, 54 Comp. Gen. 747 (1975), and cases cited therein.

Having determined that there is no legal basis for paying Mr. Donnelly's claim for real estate expenses, we turn to FEMA's request that we consider referring his claim to the Congress under the Meritorious Claims Act, 31 U.S.C. § 3702(d). Under that Act, we will refer cases to the Congress only if the claim presents such substantial legal or equitable elements as to be deserving of consideration by the Congress. We have held that the requisite equitable elements may be presented by a claim based on erroneous advice or authorization furnished by a government official, but only if the employee demonstrates reasonable reliance on the advice or authorization. See John H. Teele, 65 Comp. Gen. 679 (1986); Lowell W. Cossairt, B-224711, Jan. 8, 1987.

The circumstances of Mr. Donnelly's case are distinguishable from those in John H. Teele, cited above and referred to by FEMA as an appropriate precedent. In Teele, the employee was a new appointee to a manpower shortage position who had been erroneously authorized reimbursement for expenses that were available only for incumbent employees transferring in the interest of the government. We were satisfied on the basis of the record in his case that Mr. Teele would not likely have incurred the substantial costs involved but for the erroneous advice and "official" notice he received in the form of his travel order.

Mr. Donnelly, on the other hand, was living overseas as a government employee at the time he applied for a job with FEMA in the United States. Under these circumstances it is not at all clear from the record that Mr. Donnelly's decision to relocate back to the United States was significantly affected by whether or not his relocation costs would be reimbursed.

In the absence of any basis for concluding that Mr. Donnelly most probably suffered a loss solely or substantially as a result of the erroneous advice he received, we do not deem it appropriate to submit his claim to Congress.

*Shilton J. Doctan*  
for Comptroller General  
of the United States