

(D. Putnam)



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Corps of Engineers - Reimbursement of Unexpired
Lease Expenses - Overseas Employees

File: B-239641

Date: June 7, 1990

DIGEST

1. Corps of Engineers asks whether employees stationed in Germany, who are to be transferred to positions in the United States due to a reduction in staffing levels, may be reimbursed for expenses incurred in settling unexpired leases in Germany. The employees may not be reimbursed such expenses since 5 U.S.C. § 5724a(a)(4)(A) (1988) does not allow reimbursement of lease termination expenses at a duty station outside the United States or certain other areas specified in the statute.

2. Corps of Engineers' employees stationed in Germany, who are to be transferred to positions in the United States, may not be reimbursed lease termination expenses as miscellaneous expenses since the FTR provides that the miscellaneous expense allowance may not be used to reimburse employees for costs or expenses which are disallowed elsewhere in the regulations.

DECISION

This decision is in response to a request for a decision as to whether the Corps of Engineers, U.S. Army, European Division (EUD), may authorize reimbursement of certain unexpired lease expenses which will be incurred by employees of EUD who transfer back to the continental United States due to a reduction in EUD staffing levels.^{1/} For the reasons stated later, reimbursement is not authorized.

^{1/} The request was submitted by Mr. James A. Davies, Finance and Accounting Officer, Corps of Engineers, U.S. Army. Reference CEEUD-RM-F (340d).

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BACKGROUND

The facts briefly stated are as follows. The EUD must reduce its staff by approximately 220 employees before September 30, 1990. At current staffing levels, EUD will exceed its operating budget on August 7, 1990. Therefore, time is of the essence in having affected employees off the EUD payroll once they have accepted positions in the continental United States (CONUS). However, employees who are leasing their residences in Germany are faced with financial hardship since it is common practice in the Federal Republic of Germany for landlords to require in the lease agreement a minimum security deposit of 2 to 3 months (depending on the duration of the lease) and at least 90 days notice prior to termination of the lease. Consequently, those employees may be unwilling to exercise their reemployment rights or take advantage of the agency outplacement program within the timeframe needed by EUD, if they will forfeit their substantial security deposits.

The EUD points out that the security deposit required by the landlords also includes the cost of damage and/or renovation requirements to the residence. However, if authorized, EUD would reimburse only those expenses identified by the landlords as arising from early termination of the lease.

OPINION

Section 5724a(a)(4)(A), title 5, United States Code, 1988, provides that the expenses of the sale of a residence or the settlement of an unexpired lease of an employee at the old duty station required to be paid by the employee may be reimbursed by an agency when the old and new official stations are located within the United States, or other specified areas not applicable here.^{2/}

The sole basis for the payment of expenses incurred incident to the sale or purchase of a residence or the settlement of an unexpired lease is that provided by statute. Congress, in enacting 5 U.S.C. § 5724a and the amendments thereto, with an exception not applicable here,^{3/} has limited its application to those cases where both the old and new duty

^{2/} See also the Federal Travel Regulation (FTR), 41 C.F.R. § 302-6.1(a) (1989); Joint Travel Regulations (JTR), Vol. 2, para. C14000-1 (1990).

^{3/} Public Law 100-202, § 101(m) [Title VI, § 628(a)(1)], Dec. 22, 1987, 101 Stat. 1329-430, 431.

stations are located within the United States or other named locations.

Based upon the provisions of the cited statute and regulations, this Office has held that an employee transferred from a duty station in a foreign area to a new duty station located in the United States may not be reimbursed the expenses incurred in settling an unexpired lease in the foreign area. See 47 Comp. Gen. 93 (1967); W. Lane Abbott, B-191135, Mar. 14, 1978.

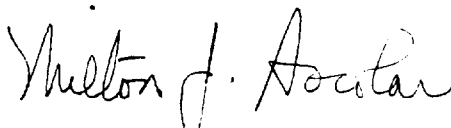
In Thomas A. Shaver, B-195851, Oct. 29, 1980, the employee, as here, was transferred from Germany to the United States. He terminated the lease on his residence in Germany and was required to forfeit his security deposit. We held that the expenses of settling the unexpired lease were not reimbursable since both duty stations were not located in the United States or other specified areas. See also Daniel A. Grover, B-221657, Mar. 25, 1986.

In Shaver, we also held that the lease termination expenses were not reimbursable as miscellaneous expenses since the FTR provides that the miscellaneous expense allowance may not be used to reimburse the employee for costs or expenses which are disallowed elsewhere in the regulations.^{4/}

We point out that even though the impending transfers are due to a reduction-in-force action and are in the interest of the government, there is no basis to allow reimbursement for expenses incurred by the employees in the settlement of their unexpired leases which is not authorized by the applicable statute. See Fred L. Newhouse, B-222135, Aug. 18, 1986.

CONCLUSION

Accordingly, the Corps of Engineers is not authorized to reimburse the employees affected by the reduction in EUD staffing levels for expenses incurred in the settlement of their unexpired leases in the Federal Republic of Germany.



Acting Comptroller General
of the United States

^{4/} FTR, para. 302-3.1(c) and para. 302-6.1(a); JTR, Vol. 2, para. C14000-1, cited earlier.