



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Terry W. Gravatt

File: B-261836

Date: November 13, 1995

DIGEST

A Department of Defense (DOD) civilian employee listed his residence for sale in anticipation that the base at which he worked would be closed and went to settlement on the residence before registering with the agency's job placement program. The agency questions whether the employee may be reimbursed real estate expenses for the sale of his residence based on an agency regulation allowing reimbursement of real estate expenses for employees who are registered in the placement program. The employee may be reimbursed. Neither the regulation nor our decision in Kirk S. Peters, B-249451, Jan. 7, 1993, which is cited in the regulation, requires employees to be registered in the placement program to receive reimbursement for real estate expenses. Rather, employees may be reimbursed real estate expenses incurred after an agency has demonstrated a clear administrative intent to transfer the employee and the employee is transferred and signs an employment agreement. Although registration in the agency placement program is evidence of an intent to transfer, agencies may look to all the facts of a particular case to determine whether this intent existed. In this case, the employee was acting on information that the base was about to be closed and that an offer to assist him in finding another job would be forthcoming.

DECISION

The Defense Finance and Accounting Service (DFAS) requests a decision on Mr. Terry W. Gravatt's claim for real estate expenses incident to his permanent change-of-station from the Naval Aviation Depot (NADEP), Pensacola, Florida, to a similar facility in Jacksonville, Florida. We approve payment of the claim.

BACKGROUND

Mr. Gravatt listed his residence for sale on July 15, 1993, knowing that there was a strong possibility that the Pensacola NADEP would be closed. The base was on the list of bases to be closed submitted to the President by the Base Closure and Realignment Commission, which the President formally accepted on July 1, 1993.

Congress confirmed the list on September 20, 1993. On September 22, the Base Commander notified the employees of this event through a newsletter and stated that he had requested permission to allow the base employees to register in the Automated Stopper and Referral System (ARARS), which is a Department of Defense (DOD) job placement program that used to be known as the Priority Placement Program (PPP). Meanwhile, employees were encouraged to preregister with the ARARS, which Mr. Gravatt did on September 23. The agency approved the Commander's request on November 5.

While these actions were taking place, Mr. Gravatt arranged for the sale of his residence, which went to settlement on September 24. He also began looking for jobs in the Jacksonville area, before formally registering with ARARS. He states that he applied to the Defense Outplacement Referral System and applied to a variety of job openings at a NADEP Jacksonville job fair. Through these efforts, rather than through the ARARS, Mr. Gravatt received a job offer at the Jacksonville NADEP, which he accepted. Subsequently, the agency issued him travel orders to report there effective November 29, 1993.

At issue is whether Mr. Gravatt's claim complies with a department regulation that provides, in relevant part:

The general rule is that an employee may be reimbursed for real estate expenses incurred before, and in anticipation of, a transfer, if a clearly evident administrative intent to transfer the employee exists at the time the expenses are incurred. (58 Comp. Gen. 208 (1979). The Comptroller General of the U.S. ruled in B-249451, dated 7 January 1993, that the announcement of a base closure, accompanied by an offer to assist in finding new positions for affected employees, is considered a clearly evident intent to transfer such employees. Registering an employee in the . . . PPP constitutes an offer to assist in finding a new position. Employees registered in the PPP or other placement program, who sell their residence in anticipation of a (permanent change-of-station), may be entitled to reimbursement of expenses related to the sale of a residence when transferred to a new (permanent duty station), if otherwise eligible under this Chapter. Joint Travel Regulation, Vol. 2, C1400(4)(a).

The submission from DFAS recommends approval of Mr. Gravatt's claim on the grounds that the command had clearly demonstrated an intention to assist the employee to find other employment at the time of the closing on his house.

However, the submission questions whether the sale of Mr. Gravatt's residence before he formally registered in the PPP disqualifies him from reimbursement for those expenses based on the regulation quoted above.

OPINION

As we noted in Kirk S. Peters, B-249451, Jan. 7, 1993, which is cited in the agency's regulation, the primary statutory requirements for the reimbursement of real estate expenses are that the employee be "transferred in the interest of the government from one official station or agency to another for permanent duty . . ." and that the employee agrees in writing to remain in the government service for 12 months after the transfer. 5 U.S.C. § 5724 (1988). The latter requirement is not at issue here.

The requirement that the transfer be in the interest of the government ensures that the expenses claimed are attributable to the transfer. This determination is not subject to rigid rules, but rather, depends on the facts of each particular case. Caridad A. Smith, B-204480, June 8, 1992; Richard E. Fitzgerald, B-186764, March 3, 1977. Nonetheless, the general rule stated in the agency's regulation is correct: evidence of a clear administrative intent to transfer an employee before any real estate expenses are incurred in most cases will be sufficient to establish that the employee incurred the expenses incident to the transfer. Kirk S. Peters, *supra*. In making this determination, agencies have broad discretion. Joseph L. White, 58 Comp. Gen. 208 (1979).

We do not view the language in the agency's regulation regarding registration in the PPP as limiting this general rule. Certainly, registration in the PPP is evidence of an administrative intent to transfer an employee. However, neither the regulation nor our decision in Kirk S. Peters, *supra*, states that only employees registered in the PPP are eligible for reimbursement for real estate expenses or that registration is a requirement for reimbursement. Rather, an agency's offer to assist an employee find other employment, through the PPP or a similar program, simply is an example of the type of evidence that satisfies the general rule stated in the first sentence.

In this case, when Mr. Gravatt listed his home for sale, he was acting on information that the base likely would be closed and that an offer to assist him in finding other employment would be forthcoming. In fact, the agency placed him in another position at another base in a matter of a few weeks and issued him travel orders authorizing relocation expenses. Given the closeness in time of the announcement of the base closure list, Mr. Gravatt's decision to list his residence

with a realtor and the agency's subsequent transfer of Mr. Gravatt to another base, we agree with the Commanding Officer and DFAS that the sale of Mr. Gravatt's residence was incident to his transfer.

Accordingly, his claim may be paid.

/s/Seymour Efros
for Robert P. Murphy
General Counsel