



COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON, D.C. 20548

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B-178522

June 21, 1973

Mr. William R. Walker  
7427 Ortega Hills Drive  
Jacksonville, Florida 32210

Dear Mr. Walker:

This is in reference to your letter of April 9, 1973, which will be viewed as an appeal of the settlement of our Transportation and Claims Division, dated March 16, 1973, disallowing your claim for reimbursement of real estate expenses in the amount of \$1,617 which you incurred in the sale of your residence at your old official duty station, Norfolk, Virginia, incident to your permanent change of station in 1970.

The record indicates you reported to your new official duty station at Cecil Field, Florida, on June 1, 1970, pursuant to travel orders dated May 4, 1970. You say that you rented your Norfolk, Virginia home at the first opportunity with a verbal understanding with the tenant that he would consider buying. After your tenant advised you that he could not buy, you attempted to find another buyer for the property, but your efforts did not meet with success. You then listed the house with a realtor and entered into a binding contract for its sale on December 6, 1971. Settlement was held on January 6, 1972, approximately 19 months after your reporting date at your new official duty station.

You submitted an application for reimbursement of expenses incurred in connection with the sale together with a request for an extension of the one-year time limitation on the settlement of residence transaction. The extension of time was granted by the Commanding Officer, Naval Aviation Engineering Service Unit (NAESU), however, the claim was referred to our Transportation and Claims Division for settlement. A settlement certificate was issued disallowing your claim on the basis that you had not entered into a sales contract during the initial one-year period. You disagree with that settlement particularly on the basis that an official of NAESU assured you at the time of transfer that you had 2 years in which to sell your house.

Allowances for expenses incurred in connection with real estate transactions of transferred Federal employees are governed by 5 U.S.C. 5724a(a)(4). Regulations implementing that provision, in effect at the

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time your claim arose, were contained in section 4, Office of Management and Budget (OMB) Circular No. A-56, revised June 26, 1969. Language similar to that contained in the OMB regulation was contained in paragraphs C8350 et seq., Joint Travel Regulations (JTR), Volume 2, effective at the time, which provided in pertinent parts:

An employee will be entitled to reimbursement for expenses required to be paid by him in connection with the sale of his residence at his old duty station; \* \* \* after he has signed the required transportation agreement and provided that:

\* . \* . \* . \*

4. the settlement dates for the sale \* \* \* for which reimbursement is requested, are not later than 1 (initial) year after the date on which the employee reported for duty at the new duty station, except that an appropriate extension of time may be authorized by the commanding officer of the activity bearing the cost, or his designee, when settlement is necessarily delayed because of litigation; or that an additional period of time not in excess of 1 year may be authorized or approved by the commanding officer of the activity bearing the cost, or his designee when it is determined that circumstances justifying the exception exist which precluded settlement within the initial 1-year period of the sale/purchase contracts \* \* \* entered into in good faith by the employee within the initial 1-year period (the circumstances on which the determination is made to justify the exception will be set forth in writing); (Emphasis supplied.)

In accordance with the provisions of the above-quoted regulation, the Commanding Officer had authority to grant an extension of time for settlement up to a period of one year, provided the employee had entered into a sale/purchase contract during the initial one-year period. In effect, the regulation conditions the authority to grant an extension on the existence of a contract during the initial one-year period. Hence, when an employee failed to enter into a contract during the initial one-year period, no authority existed for the grant and extension of the time for settlement.

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Inasmuch as you did not enter into a sales contract during the initial one-year period, the Commanding Officer, NAESU, had no authority under statute or regulation to grant you an extension of the one-year settlement period. The extension granted you was invalid because the Government is not bound by the acts or representations of an agent acting beyond the scope of his actual authority. Bornstein v. United States, 170 C. Cls. 576, 345 F. 2d 558 (1964); 44 Comp. Gen. 337 (1964). Similarly, assurances you state were given by a NAESU official to the effect that you would have 2 years in which to sell your home did not bind the Government to make payments to you which were not permitted by the controlling regulation.

It is noted that OMB Circular No. A-56 was amended effective October 28, 1972, to provide authority for extension of the settlement time limitation during the initial one-year period where no contract had been entered into during that period. A similar change was made in the applicable JTR. However, those amendments were not in effect during the period you were eligible for reimbursement of expenses incident to the sale of your residence. Valid regulations may be amended prospectively to increase or decrease the benefits authorized within the scope of the controlling statute, however, there is no general authority to make amendments to regulations retroactively effective. See 40 Comp. Gen. 242 (1960) and 32 id. 315 (1953). Accordingly, your right to reimbursement was not retroactively increased by virtue of those amendments.

In view of the foregoing, the disallowance of your claim for real estate expenses incurred in the sale of your residence at your old official station was proper and is sustained. Although the original documents which you submitted in support of your claim have become a part of the records of this Office supporting the action taken and, therefore, may not be returned as requested, we enclose copies of the materials you submitted.

Sincerely yours,

Paul G. Dembling

For the Comptroller General  
of the United States