Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Kenneth E. James—Reconsideration

File: B-256002.2

Date: July 2, 1996

DIGEST

An employee signed a contract on September 14, 1990, to construct a new residence near the location which eventually became his new permanent duty station and on May 14, 1991, the employee settled on his new residence. The agency subsequent to the settlement date, established a new position, and by memorandum, dated January 21, 1992, it reassigned him to that new position, effective April 19, 1992. Employee's claim for reimbursement of real estate purchase expenses is denied since there was no clear administrative intent to transfer him at the time when his expenses were incurred. Kenneth E. James, B-256002, June 2, 1994, reconsidered, clarified, and affirmed.

DECISION

Mr. Kenneth E. James requests that we reconsider our decision, Kenneth E. James, B-256002, June 2, 1994, which denied his claim for real estate purchase expenses. For the following reasons, we reconsider, clarify, and affirm that prior decision.

BACKGROUND

In our prior decision on this matter, we found that on September 14, 1990, Mr. James signed a contract for a new residence to be constructed near Portland, Oregon, the location which eventually became his new permanent duty station, that he settled on his new residence on May 14, 1991, and that the Department of Veterans Affairs did not actually transfer him from Palo Alto, California, to Portland, Oregon, until April 22, 1992. Although he asserted that a memorandum, dated April 30, 1991 (prior to his settlement date), showed administrative intent to transfer him, we denied his claim because there was no clearly existing administrative intent to transfer him at the time he signed the construction contract on September 14, 1990.

In his request for reconsideration, Mr. James contends that our prior decision disregarded 48 Comp. Gen. 395 (1968), that he satisfied the requirements of Joan E. Marci, B-188301, Aug. 16, 1977, and that a Department of Veterans Affairs letter,

dated June 23, 1989, written by Dr. Daniel Deykin to Mr. James, shows administrative intent to transfer him.

While we did not mention the following facts in our previous decision, they are helpful in resolving this reconsideration. In a letter from Daniel Deykin, M.D., to Mr. John Crabb at the Portland VAMC, dated June 28, 1991, the possibility of Mr. James's transfer was also discussed, and it was noted that administrative procedures to accomplish the transfer, including the development of a position description were in process. The focus of the letter was to plan the transfer with an outside target date of September 30, 1991. However, while the target date was not met, the Department of Veterans Affairs subsequently established the position, and by memorandum dated January 21, 1992, it informed Mr. James that his reassignment to the newly established position in Portland, Oregon, would take effect on April 19, 1992. (The actual transfer date was April 22, 1992, when he reported for duty in Portland.)

In regard to Mr. James's first contention that our prior decision disregarded 48 Comp. Gen. 395 (1968), we note that this is not so. Our prior decision did not have to address that case since we found that the employee in 48 Comp. Gen. 395 (1968) had received definite notice that his permanent station was being transferred, while Mr. James did not. Furthermore, we also note that Mr. James contends again that there is a conflict in our decisions, in regard to a previously existing administrative intent to transfer an employee, as to whether the date of the contract signing to construct a new residence or the date of settlement on a newly constructed residence is controlling in order for the employee to be reimbursed for real estate purchase expenses. We do not necessarily agree with Mr. James's contention, and in any event we need not decide that issue here, since under the circumstances of the instant case the position to which Mr. James was transferred was not even established until well after May 14, 1991 (his date of settlement). In other words, whether our prior decision should have used the date of settlement or the earlier date of the contract signing is irrelevant to the result which properly denied Mr. James's claim. Thus, Kenneth E. James, B-256002, June 2, 1994, is clarified.

We will now consider Mr. James's second and third contentions in tandem since they both relate to the two criteria set forth in Joan E. Marci, B-188301, Aug. 16, 1977. There, we held that an employee who had relocated her residence prior to the issuance of travel orders may not be reimbursed for relocation expenses unless it is shown that (1) there was a previously existing administrative intention to transfer her which was clearly evident at the time the expenses were incurred, and that (2) the agency determines that the move was incident to the transfer. See also John Chambers, B-260456, June 4, 1996, and Caridad A. Smith, B-204480, June 8, 1982.

Our review of all the various letters and memoranda which Mr. James cites show that they only discussed the possibility of his transfer after a new position for biostatistician had been established by the Department of Veterans Affairs in Portland, Oregon. These letters and memoranda clearly cannot demonstrate a previously existing administrative intention to transfer Mr. James, especially since the new position was not even established until well after his May 14, 1991, date of settlement and Mr. James was first notified of his reassignment to the new position by a memorandum, dated January 21, 1992, with an effective date of April 19, 1992.

Accordingly, upon full reconsideration of all the facts, we affirm our prior decision in this matter and Mr. James's claim is denied.

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