



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Bruce Wayne Stevenson

File: B-266312

Date: April 8, 1996

DIGEST

An employee who transferred from New Mexico to Hawaii incurred an early termination fee pursuant to an automobile lease. The lease agreement prohibited the employee from taking the car out of the country. The employee's claim for reimbursement of the fee as a miscellaneous expense is denied since the Federal Travel Regulation, 41 C.F.R. § 302-3.1(c)(9) (1995), excludes from miscellaneous expense coverage losses and costs incurred in selling or buying personal property, and an automobile lease is associated with the sale or purchase of personal property.

DECISION

This is in response to a request for an advance decision from Mr. John F. Best, Chief, Finance and Accounting Division, Directorate of Resource Management, U.S. Army Corps of Engineers, concerning whether an employee, Mr. Bruce Wayne Stevenson, may be reimbursed for automobile lease termination charges of \$1,334.25 pursuant to a permanent duty station transfer. For the reasons set forth below, we conclude that Mr. Stevenson's claim may not be paid.

BACKGROUND

Mr. Stevenson, an employee of the U.S. Corps of Engineers, was transferred from Cannon Air Force Base, New Mexico, to Fort Schafter, Hawaii, by travel authorization issued on March 11, 1992. In October 1988, Mr. Stevenson had entered into an automobile lease agreement in New York State for a term of 48 months. The terms of the agreement prohibited use of the car outside of the state where the vehicle was first titled and/or registered for more than 30 days without prior written consent of the leasing agency and Ford Credit. The agreement also provided an option to purchase at the end of the lease.

Mr. Stevenson states that he requested permission to ship the car to Hawaii, but his request was denied. Mr. Stevenson paid the early termination fee of \$1,334.25 and

returned the car to the lessor; he did not exercise his option to purchase the vehicle pursuant to the lease agreement.

Mr. Stevenson's employing agency denied his request for reimbursement of the early termination fee as a miscellaneous expense on the basis that it was considered a loss in the sale of personal property, citing to Edward R. Esparza, B-232394, Oct. 6, 1989. In Esparza, we held that a provision in the Federal Travel Regulation (FTR) specifically excluded from miscellaneous expense coverage losses and costs incurred in selling or buying personal property. Mr. Stevenson says that the Esparza decision is not applicable to his situation since the employee in that case purchased the automobile making it his personal property. He, on the other hand, never owned the leased car. Therefore, he concludes that he is entitled to a miscellaneous expense reimbursement for the early termination fee.

OPINION

Section 5724a(b) of title 5 of the United States Code authorizes reimbursement of "necessary and appropriate" miscellaneous expenses incurred incident to a permanent change of station within a set monetary limit.¹ The implementing provisions for this provision are contained in 41 C.F.R. Part 302-3 of the FTR. Section 302-3.1 (1995), of these regulations provides, generally, that a relocating employee is entitled to receive an allowance for various miscellaneous expenses, the purpose of which is to help defray certain expenses associated with discontinuing a residence at one location and reestablishing a residence at a new location. The costs intended to be reimbursed under the miscellaneous expenses allowance include forfeiture losses on certain service contracts such as medical, dental and food locker contracts that are not transferrable. 41 C.F.R. § 302-3.1(b)(4).

However, 41 C.F.R. § 302-3.1(c)(9), specifically excludes certain costs, including--- "Losses as the result of the sale or disposal of items of personal property not considered convenient or practicable to move".

We disagree with Mr. Stevenson's contention that since he never exercised his option to purchase the automobile, but only leased it, it was not personal property. Although the term "personal property" is not specifically defined in section 302 of the FTR, personal property, in its ordinary significance, refers to all objects and rights which are capable of ownership, except for freehold interests in real estate. Yet another definition is that personal property is the right or interest which a

¹Such reimbursement for miscellaneous expenses is limited to 2 weeks' basic pay if the employee has an immediate family, or 1 week's basic pay, if he does not; and may not exceed the maximum rate for GS-13.

person has in things personal. See 63A Am. Jur. 2d Property § 21 (1984). Further, Mr. Stevenson entered into a motor vehicle leasing contract in New York State which is regulated under the personal property law section of the Consolidated Laws of New York. See N.Y. Pers. Prop. Law §§ 330-353 (McKinney 1992). Therefore, we conclude that Mr. Stevenson's loss was associated with the sale or purchase of personal property, and as such is specifically excluded from the miscellaneous expense allowance under the provisions of 41 C.F.R. § 302-3.1(c)(9).

Accordingly, Mr. Stevenson's claim for reimbursement is denied.

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

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