



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Kathleen Cox—Temporary Quarters Expenses

File: B-257719

Date: May 8, 1996

DIGEST

Employee moved into a furnished rental apartment while on temporary duty and maintained a permanent residence at her old duty station where her family continued to reside. She was subsequently given a permanent change of station to her temporary duty location and was authorized 60 days temporary quarters subsistence expenses. After her transfer became effective, she vacated her permanent residence at her old station, moved her family and her household goods to her new duty station, and stayed in the same furnished apartment at the new station for approximately 45 days before her new permanent residence was ready for occupancy. Since the agency has determined that her occupancy of the furnished apartment was in fact temporary under 41 C.F.R. § 302-5.2(c) (1995), her claim for temporary quarters expenses may be paid. William E. Gray, 66 Comp. Gen. 532 (1987), distinguished.

DECISION

The Internal Revenue Service (IRS) requests a decision as to whether it may reimburse an employee for temporary quarters subsistence expenses in connection with a permanent change of station where the employee continued to reside after transfer in the apartment which she had rented while on temporary duty.¹ For the following reasons, her claim may be paid.

BACKGROUND

The record shows that the employee, Ms. Kathleen Cox, stationed at Laguna Niguel, California, was asked in early 1993 if she would be interested in a position managing the IRS office in Palm Springs, California. She indicated she would accept this position if moving expenses were allowed. Pending a decision on that question, she was assigned to temporary duty in Palm Springs on March 8, 1993.

¹This request was submitted by Mr. Steve Goldberg, Chief, Office of Travel Management and Relocation, IRS, Department of the Treasury, Washington, DC.

She initially stayed at a hotel at a cost of \$80 per night. Because of budget constraints and because the duration of the detail was indefinite, she entered into a month-to-month lease for a furnished apartment at an average cost of \$45 per night. She moved into this apartment on April 1, 1993, and continued to maintain her permanent residence at her old duty station and her family (daughter and granddaughter) continued to reside there.

On July 21, 1993, the District Director approved the transfer of Ms. Cox to Palm Springs with a reporting date of August 8, 1993. Her travel orders authorized her 60 days of temporary quarters occupancy.

Ms. Cox asked IRS officials whether, after her transfer, she could continue to stay in the same furnished apartment she occupied as temporary quarters. Based on a review of the agency's travel manual, the IRS advised her that nothing prohibited her staying there. She then gave notice on her permanent residence at her old duty station and promptly located a new permanent residence in the Palm Springs area which was available for occupancy on September 23, 1993. In August 1993, she vacated her old permanent residence, her family joined her in Palm Springs, and her household goods were shipped to Palm Springs.

Based on the agency's advice, she continued to reside in the furnished apartment in Palm Springs and claimed temporary quarters expenses for the period of August 8 to September 23, 1993. The IRS Western Region Fiscal Management Office suspended Ms. Cox's temporary quarters lodging claim² based on William E. Gray, 66 Comp. Gen. 532 (1987), since she had not vacated the apartment she occupied in Palm Springs at the time of notice of transfer.

The IRS points out that Ms. Cox did not move her family and her household goods to Palm Springs until after she was transferred there and that her intent was to occupy the furnished apartment only temporarily until she could move into permanent quarters. Thus, it concludes the apartment used by Ms. Cox while on temporary duty was indeed temporary lodging. The IRS therefore requests that we advise whether the suspended claim may be paid despite Gray.

OPINION

Title 5, United States Code, section 5724a(a)(3) authorizes an agency to reimburse employees transferred in the interest of the government for subsistence expenses

²Her non-lodging temporary quarters expenses were paid.

for a period of 60 days³ while occupying temporary quarters. The implementing Federal Travel Regulation (FTR) (41 C.F.R. Part 302-5) provides in section 302-5.1⁴ that the administrative determination as to whether the occupancy of temporary quarters is necessary and the length of occupancy shall be made on an individual-case basis. The FTR further provides in section 302-5.2(c):⁵

"(c) *What constitutes temporary quarters.* Generally, the term 'temporary quarters' refers to lodging obtained from private or commercial sources for the purpose of temporary occupancy after vacating the residence occupied when the transfer was authorized."

What constitutes temporary quarters under this regulation is not susceptible of any precise definition and, therefore, that determination must be based on the facts in each case. See Charles P. Ball, B-223407, June 18, 1987, and the decisions cited therein. Agencies should consider such factors as the type of quarters, the duration of the lease, movement of household effects into the quarters, efforts to secure a permanent residence, expressions of intent, and any other pertinent facts and circumstances surrounding the occupancy. If, on the basis of these considerations, it is determined that, at the time the employee moved into the residence, he or she clearly manifested the intent to occupy the quarters only on a temporary basis, payment of temporary quarters subsistence expenses is allowable, even though the quarters could be occupied permanently, or did, in fact, become permanent. Charles P. Ball, *supra*.

Applying these criteria to the instant case, we note that the record shows that Ms. Cox rented a furnished apartment on a month-to-month lease and that she maintained her permanent residence at her old duty station until her transfer on August 8, 1993. Her family continued to live in the permanent residence and Ms. Cox considered it to be her residence until after her transfer was authorized, even though she was living in Palm Springs at that time. Moreover, Ms. Cox was advised by IRS officials that she could stay in her rented apartment as temporary quarters after the transfer.

Based on these facts, the IRS determined that Ms. Cox had satisfactorily showed that her apartment in the Palm Springs area was only temporary and that her

³The period may be extended by the agency for an additional 60 days for compelling reasons. No additional period was required here.

⁴41 C.F.R. § 302-5.1 (1995).

⁵41 C.F.R. § 302-5.2(c) (1995).

permanent residence at her old duty station was, in fact, her residence until after her transfer.

As indicated above, however, Ms. Cox's claim for lodging expenses was disallowed by the IRS regional fiscal management office based on William E. Gray, 66 Comp. Gen. 532 (1987). We believe Gray is distinguishable.

In Gray, an employee stationed in Chicago was placed on a 4-month detail to Baltimore. His family moved with him to a rented townhouse in Baltimore and the detail was extended to over 13 months before he was officially transferred to Baltimore. He and his family continued to reside in the same townhouse during the entire detail and after his transfer, and he claimed temporary quarters expenses for occupying those quarters for an additional 90 days. The agency disallowed his claim, because he had not vacated "the residence occupied when the transfer was authorized," as required by the FTR.

Under those circumstances, we upheld the agency's determination of Mr. Gray's ineligibility. As we stated in Gray, an employee who is transferred to the location at which he has been performing extended temporary duty may not receive temporary quarters expenses if, after the date of his transfer, he continues to stay at the same residence he was occupying during the temporary assignment. While Mr. Gray may have viewed the rented townhouse as purely temporary housing, the "residence" which the employee must vacate under the regulation quoted above includes any housing, temporary or permanent, as long as it constitutes the employee's actual place of abode at the time he is transferred rather than mere transient lodgings. William E. Gray, 66 Comp. Gen. at 535, supra.

William E. Gray was not intended to set forth a rigid rule that lodging occupied during temporary duty must be vacated upon transfer or to vary the requirement in the FTR that the determination of what constitutes temporary quarters must be based on the facts in each case. There is no absolute requirement that a temporary duty residence must be vacated in all cases. Rather, in each case, the agency must examine the facts to determine whether a temporary duty residence has, in fact, become an actual place of abode rather than mere temporary lodgings. We will uphold the agency's determination unless it is arbitrary or capricious. Thus, in Gray we upheld the agency's determination that the townhouse which Mr. Gray and his family had occupied for more than 13 months before his transfer had become his "actual place of abode" at the time he was transferred.

In the current case, the IRS concluded that the furnished apartment used by Ms. Cox while on temporary duty was indeed temporary lodging and that her actual place of abode was her residence at her old duty station for purposes of FTR § 302-5.2(c). Based on the circumstances of Ms. Cox's claim outlined above, we believe the IRS reasonably concluded that her residence for purposes of FTR

§ 302-5.2(c) remained at her old duty station until after her transfer. Since the agency has reasonably determined that her temporary duty apartment was only temporary lodging and had not become her place of abode, her continued stay at that apartment following her transfer is not a bar to her claim for temporary quarters expenses.

Accordingly, Ms. Cox's claim may be paid, if otherwise proper.

Robert P. Murphy
General Counsel