

DECISION

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

50872

95441

095441

FILE:

B-180286

DATE: JUL 2 1975

MATTER OF:

**Jerry L. Miller - Temporary quarters subsistence
expenses**

DIGEST:

1. Under 5 U.S.C. 5724a(a)(3) employee who is transferred from duty station in foreign area to new duty station in United States may be allowed temporary quarters subsistence expenses (TQSE) incurred by his family while occupying temporary quarters at old duty station since neither statute nor regulations prohibit payment on basis of fact that temporary quarters are in foreign area. However, since temporary lodging allowance (TLA) under 5 U.S.C. 5923(1)(3) duplicates TQSE to extent that cost of temporary lodgings may be allowed under both authorities, TQSE payments must be reduced by amount of TLA received by employee for cost of same lodgings for same period.
2. Reimbursement of employee and his further claim for subsistence expenses while occupying temporary quarters incident to transfer to new duty station in United States are not proper since period for which claims are made is more than 30 days after employee reported to new duty station and after his family vacated residence at old duty station. However, since employee and his dependents apparently occupied temporary quarters during earlier period, claim may be revised to cover subsistence expenses incurred during a proper period.

This action concerns the propriety of certifying for payment a voucher submitted by Mr. Jerry L. Miller, an employee of the Defense Supply Agency, representing reimbursement for temporary quarters subsistence expenses incurred by his family while occupying temporary quarters in a foreign area incident to a change of official station.

The record indicates that Mr. Miller was transferred from Chicksands, England, to Philadelphia, Pennsylvania. Incident to the transfer, Mr. Miller and his family vacated their residence in Chicksands on May 10, 1973, and Mr. Miller reported for duty at his new official station on May 11, 1973. His family occupied temporary quarters in Chicksands until July 19, 1973, when they joined Mr. Miller at his new duty station. Mr. Miller and his family occupied temporary quarters at the new duty station until July 26, 1973.

Mr. Miller has been reimbursed for the subsistence expenses he incurred for the period, June 26 through July 18, 1973, when he occupied temporary quarters at his new duty station, and for the period July 19 through July 25, 1973, when he and his family occupied temporary quarters at his new duty station. However, the agency has questioned the propriety of allowing of Mr. Miller's claim for reimbursement for subsistence expenses incurred by his family during the period, June 26 through July 18, 1973, when they occupied temporary quarters in Chicksands. The agency's doubt in this matter arises from the fact that there is no specific regulation authorizing reimbursement for subsistence expenses incurred by an employee or his family while occupying temporary quarters in a foreign area incident to a transfer to the United States.

5 U.S.C. 5724a(a)(3) (1970) and the implementing regulations, Federal Travel Regulations (FPMR 101-7), part 5 (May 1973), provide that an employee may be allowed the subsistence expense incurred by him and his family for a period of not more than 30 days while occupying temporary quarters incident to a transfer to a new duty station located in the United States, its territories or possessions, the Commonwealth of Puerto Rico, or the Canal Zone (hereinafter referred to as the "United States or nonforeign areas"). Incident to such a transfer, the dependent of an employee may be allowed subsistence expenses incurred while occupying temporary quarters at the old or new duty stations or some other location. 2 Joint Travel Regulations, para. C8251-4 (change 75, December 1, 1971). Since the statute and implementing regulations merely require the new duty station to be located in the United States or nonforeign areas and do not require that the temporary quarters occupied be located in such areas, we believe that an employee may be allowed temporary quarters subsistence expenses (TQSE) under 5 U.S.C. 5724a(a)(3) (1970) while occupying temporary quarters in a foreign area incident to a transfer from a duty station located in a foreign area to a new duty station located in the United States or nonforeign areas.

However, 5 U.S.C. 5923(1)(B) and the implementing regulations, Standardized Regulations (Government Civilians, Foreign Areas), provide that an employee stationed in a foreign area, who is not provided Government-owned or rented quarters, may be allowed a temporary lodging allowance (TLA) for the cost of temporary quarters incurred by him and his family for a period not to exceed one month before his departure from the post. Thus, where an employee and his family occupy temporary quarters at the employee's old duty station in a foreign area incident to a transfer to a new duty station in the United States or nonforeign areas, the employee may be allowed the cost of such quarters under two authorities. However, FTR, para. 2-5.2(1) (May 1973), provides that an employee may not be allowed TQSE which duplicate in whole or in part payments received under other laws or regulations covering similar costs. In this regard we have held that, for the purpose of section 2-5.2(1) and predecessor regulations, the two allowances, TLA and TQSE, are designed for different purposes and do not duplicate each other. B-165392, November 1, 1968. That decision, however, involved the question of whether an employee could be allowed TQSE while occupying temporary quarters in the United States incident to a transfer to a duty station in the United States or nonforeign areas from a duty station in a foreign area if he had received a TLA for the cost of temporary quarters occupied at the old duty station. Although the two allowances may be designed for different purposes and do not duplicate each other when paid for temporary quarters occupied during different periods at different locations, we must conclude that they duplicate each other to the extent that both allowances may be allowed for the cost of occupying the same temporary quarters for the same period. Accordingly, reimbursement under 5 U.S.C. 5724a(a)(3) (1970) for an employee's subsistence expenses incident to such a transfer must be reduced by the amount received by him as a TLA under 5 U.S.C. 5923(1)(B) (1970) for the cost of occupying the same temporary quarters during the same period.

Accordingly, to the extent otherwise proper under the applicable regulations, Mr. Miller may be allowed the subsistence expenses incurred by his family while occupying temporary quarters in Chicksands incident to his transfer from Chicksands to Philadelphia. Since Mr. Miller and his family vacated their residence on May 10, 1973, and Mr. Miller arrived at his new duty station on May 11, 1973, he may not be allowed a TLA. Standardized Regulations, para. 124.1b (SR-160, June 18, 1967) and 124.2c (SR-104, April 2, 1961). Thus there apparently would be no payments to be deducted from the amount of TQSE allowable.

B-180286

However, 2 JTR, para. 8251-3a (change 75, December 1, 1971), provides that to be eligible for TQSE the period of use of temporary quarters for which a claim is made must begin not later than 30 days from the date the employee reported for duty at his new official station or if not begun during this period, not later than 30 days from the date the family vacates the residence at the old duty station. Since Mr. Miller and his family vacated their residence on May 10, 1973, and Mr. Miller reported for duty at his new duty station on May 11, 1973, Mr. Miller has been improperly reimbursed for TQSE for the period, June 26 through July 18, 1973, when he occupied temporary quarters in the United States and for the period July 19 through July 25, 1973, when he and his family occupied temporary quarters in the United States. Moreover, his claim for TQSE for the period, June 26 through July 18, 1973, his family occupied temporary quarters at Chicksands may not be allowed. However, since it appears that he and his family occupied temporary quarters during earlier periods, his claim may be revised to cover subsistence expenses incurred by himself and his dependents while occupying temporary quarters during a proper period.

R.F. KELLER

Deputy Comptroller General
of the United States