

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

FILE: B-183667

DATE: MAY 3 1976

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MATTER OF:

Warren J. Moxness - Claim for temporary quarters
subsistence allowance

DIGEST:

Transferred employee moved into rented house on October 10, 1973, which he purchased 7 days later upon approval of loan application. Employee is not entitled to temporary quarters subsistence allowance by virtue of Federal Travel Regulations (FPMR 101-7) para. 2-5.2h (May 1973) because such paragraph requires that employee, in short distance transfer, occupy quarters other than permanent residence. Record in this case shows that employee was not occupying temporary quarters on October 10, 1973, the date he moved into a house which he intended to make his permanent quarters.

This action is before us as the result of the appeal by Mr. Warren J. Moxness of the disallowance by our Transportation and Claims Division (now Claims Division) on March 11, 1975, of his claim for reimbursement in the amount of \$259.25 for a temporary quarters subsistence allowance incident to an official change of duty station.

The record indicates that Mr. Moxness, an employee of the United States Department of Agriculture, was transferred from Chicago, Illinois, to Minneapolis, Minnesota. Pursuant to Travel Authorization dated August 20, 1973, Mr. Moxness was authorized subsistence expenses in temporary quarters not to exceed 30 days. Upon arrival in Minneapolis on October 10, 1973, Mr. Moxness moved into a house which he rented for \$10 per day and subsequently purchased on October 17, 1973. In March 1974, Mr. Moxness submitted a voucher claiming subsistence in the amount of \$259.25, which represented rent paid from October 10 to October 16, and \$199.25 expended for meals and miscellaneous expenses.

Despite his contention that he rented the house on a temporary basis and that he could vacate the premises if a clear deed could not be furnished or if mortgage money could not be obtained, it is undisputed that Mr. Moxness took immediate action to obtain approval of a loan for the purchase of the residence. By virtue of that action,

the Transportation and Claims Division determined that at the time the claimant entered the house, it was his intent to remain there and to make it his permanent abode. Because Mr. Moxness thus intended the house to be his permanent residence, it was concluded that he was not entitled to a subsistence allowance for occupancy of temporary quarters.

In appealing the disallowance, Mr. Moxness relies upon the regulation contained in 7 Agriculture Department Administrative Regulations 562, § 8.2h (October 22, 1971) which provides as follows:

"Allowance when short distance transfer is involved. An employee and/or members of his immediate family will not be eligible for temporary quarters when the employee's new official station, in relation to his old residence, is less than 40 miles farther than the distance between the old residence and the employee's old official station, except that the expenses of temporary quarters are allowable for the period during which the employee is awaiting the arrival of his household goods shipped from the old to the new residence provided use of such quarters is begun not later than the maximum time for beginning allowable travel and transportation. All measurements will be made according to map distance along a usually traveled route."

The subsection, which is also set forth at Federal Travel Regulations (FPMR 101-7) para. 2-5.2h (May 1973), is applicable to short distance transfers and would not be applicable to Mr. Moxness' case as his transfer of duty station was considerably more than 40 miles. In questions regarding temporary quarters, the threshold issue is whether the quarters being occupied by the employee are temporary or permanent. This Office has consistently held that whether a residence is temporary or permanent depends on the intent of the employee at the time he or a member of his family occupies the quarters which later becomes his permanent residence. B-184836, November 26, 1975. The fact that an employee was paying rent for the residence, that settlement of the purchase had not been made, that furniture and utilities were not available, or that there was

B-183667

a savings to the Government is not material to the determination of the intent with which he occupied the residence. B-177546, February 8, 1973.

Paragraph 2-5.2h provides for payment of the expenses of temporary quarters while the employee is awaiting the arrival of his household goods shipped from the old to the new residence. With respect to transfers greater than 40 miles, the general provisions of FTR para. 2-5 will apply with regard to payment of subsistence while occupying temporary quarters.

Temporary quarters refers to quarters occupied by the employee and his family other than the premises intended by him to be his new permanent residence. Thus, under a proper interpretation of FTR para. 2-5.2h, the expenses of temporary quarters may properly be reimbursed incident to a short distance transfer only for the period of time when the employee and his family is occupying quarters other than the premises intended by him to be his permanent residence and is otherwise in compliance with the requirements of that regulation.

Accordingly, and because Mr. Moxness was occupying his permanent residence at all times relevant to this action, the denial of his claim by the Transportation and Claims Division is hereby sustained.

R.F. KELLER

Deputy } Comptroller General
of the United States